(25,872)

(25,931)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 1042.

OELWERKE TEUTONIA, APPELLANT,

vs.

ERLANGER & GALINGER.

FILED MARCH 30, 1917.

No. 1101.

ERLANGER & GALINGER, APPELLANTS,

vs.

OELWERKE TEUTONIA.

FILED APRIL 30, 1917.

APPEALS FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

INDEX.

	Original.	Print
Transcript of record from the court of first instance of the city of Manila	1	1
Statement	1	1
Amended and supplementary complaint	3	2

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 16, 1917.

	Original.	Print
Answer	15	10
Stipulation and order for deposit of amount of sale of salved copra	25	15
Stipulation and order designating Hongkong & Shanghai Banking Corporation custodian, &c.	26	16
Proceedings at trial	27	17
Exhibit A—Report of Philippine Weather Bureau, January 28, 1914, &c.	27	17
Stipulation as to correspondence relating to wreck of the S. S. "Nippon"	29	18
Exhibit B—Correspondence relating to wreck of S. S. "Nippon," &c.	29	18
Deposition of Simon Erlanger	54	30
Deposition of Julius Reis	77	43
Exhibit D—Statement (not set out)	82	46
Exhibit E—Statement, number of laborers	84	47
Exhibits F and G—Statement of expenditures (not set out)	90	50
Exhibit H—Letter, Lawrence to Haussermann, Cohn & Fisher, June 11, 1913	97	54
Exhibit I—Report of conference held June 16, 1913, as to S. S. "Nippon"	98	54
Testimony of J. W. Ferrier	120	67
Exhibit K—(Not set out)	122	68
Testimony of George W. Simmie	124	69
Benjamin Franklin Taylor	135	75
George Anderson	166	92
Deposition of J. F. Ruttledge	185	102
Notary's certificate	193	107
Deposition of C. E. Lothiguis	194	108
Notary's certificate	200	113
Copy of ship's log book while under charter to Erlanger & Galinger	201	113
Deposition of Baldomero Fernandez y Asis	207	116
Notary's certificate	213	122
Deposition of Henry B. McCoy	215	122
Stipulation as to Exhibit A	218	125
Testimony of David S. Pratt	219	125
Edward P. Thompson	233	133
David S. Pratt (recalled)	241	137
Max Skupin	243	138
Defendants' Exhibit 1—Certificate of acting director of Weather Bureau	245	139
Defendants' Exhibit 2—Certificate of surveyor of the port of Manila	247	140
Depositions of Eric Eggert	249	141
Exhibit A—Telegram, Eggert to Swedish East Asiatic Co., May 14, 1913	274	155
Exhibit C—Translations in Scott's code of telegrams, &c.	275	155

	Original.	Print
Deposition of Emil Gode	277	156
Charles Brown	283	160
J. P. Breckwoldt	301	169
L. Lebreton	317	179
Patrick Miller	326	184
A. C. Bailey	334	190
Chas. S. Robinson	345	198
A. F. Peters	353	203
A. Wegener	355	204
Gustav Stroebel	358	206
Defendants' Exhibit 2—Letter, Haussermann, Cohn & Fisher to Struckman & Co., May 15, 1913	361	208
3—Letter, Struckman & Co. to Haussermann, Cohn & Fisher, May 15, 1913	363	209
4—Letter, Struckman & Co. to Erlanger & Galinger, May 16, 1913	364	210
Decision, Crossfield, J.	368	212
Bill of exceptions filed, &c.	375	217
Assignment of errors by plaintiff	375	217
Assignment of errors by Oelwerke Teutonia	376	218
Opinion *per curiam*	377	218
Grounds for petition for rehearing	391	238
Judgment on motion for rehearing	392	239
Judgment	393	240
Motion to set aside judgment by Oelwerke Teutonia	393	240
Order denying motion to set aside judgment	394	241
Petition for appeal by Oelwerke Teutonia	394	241
Assignments of error by Oelwerke Teutonia	395	241
Allowance of appeal of Oelwerke Teutonia	396	242
Citation on appeal of Oelwerke Teutonia	396	242
Petition for appeal by plaintiffs	397	242
Assignments of error by plaintiffs	397	242
Affidavit of Charles C. Cohn, &c.	398	243
Allowance of appeal of plaintiffs	399	244
Citation on appeal of plaintiffs	400	244
Proof of service, &c.	400	244
Orders extending time for translation, &c.	401	245
Clerk's certificate	402	245
Stipulation as to record	402	246
Judgment	404	246
Appeal by plaintiffs and allowance	406	247
Assignments of error	407	248
Citation and service	408	248
Bond on appeal	411	249
Petitions and orders extending time for filing, &c.	413	251
Stipulation as to printing record	417	253

1 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the United States.

ERLANGER & GALINGER, a Partnership, Plaintiff and Appellant,

vs.

OELWERKE TEUTONIA, a Corporation, Defendant and Appellee.

UNITED STATES OF AMERICA,
Philippine Islands, ss:

Record of the Proceedings of the Court of First Instance of the City of Manila and of the Supreme Court of the Philippine Islands in the Case and Matter Hereinafter Stated.

Said action was commenced on the 5th day of August, 1913, and proceeded to final disposition as hereinafter set forth, and during the progress thereof pleadings and papers were filed, process was issued and returned, evidence was taken, and orders of the courts were made and entered in the order and on the dates hereinafter stated:

On the 5th day of August, 1913, plaintiff herein filed its complaint against the defendants therein named, which said complaint was duly served and after the appearance of defendant the said complaint was thereafter, to-wit, on the 23rd day of September,
2 1913, superseded by the filing of an amended and supplementary complaint in words and figures hereinafter set forth.

That thereupon plaintiffs made application for a writ of attachment for the seizure of the steamship "Nippon," then in the Bay of Manila, and within the jurisdiction of the Court of First Instance of Manila. Evidence was adduced as to the salved value of the said steamer which was found by the Court to be the sum of Two Hundred and Ten Thousand (P210,000.) Pesos, whereupon the vessel was attached, which said attachment was subsequently discharged upon the execution and delivery by the owners of said vessel of a bond in the said sum conditioned for the payment to plaintiffs of such amount as they might be entitled to receive for the salvage of the said steamer.

That thereafter, on the 21st day of August, 1913, plaintiff by its attorneys made known to the Court that all matters in controversy between plaintiff and the defendants, the Swedish East Asiatic Company, Ltd., and other persons interested as owners and underwriters of the S. S. "Nippon" had been adjusted and settled out of Court, and prayed that the cause be dismissed as to the said defendant, Swedish East Asiatic Company, Ltd., and all other owners, insurers

and underwriters of the said steamship sued under fictitious names, whereupon the Court of First Instance of Manila by order entered in said cause under date of August 30, 1913, dismissed the action as against the owners and underwriters of the said Steamship "Nippon" and ordered the Sheriff of the said Court to release from attachment the said steamship, with her tackle, apparel and equipment.

That thereafter, on the 23rd day of September, 1913, plaintiff, with the consent of the Court, filed an amended and supplementary complaint in words and figures as follows, to-wit:

3 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

No. 10859.

SIMON ERLANGER and ISADORE ERLANGER, Copartners, Doing Business under the Firm-name and Style of Erlanger & Galinger, Plaintiff-,

vs.

THE SWEDISH EAST ASIATIC CO., LTD.; THE SVERIGES ANGFARTYGES Assurans Forening of Gothenburg; John Doe, Richard Doe, Henry Doe, Frederick Doe, Howard Doe, James Doe, Oelwerke Teutonia, Richard Pike, Henry Pike, Frederick Pike, Howard Pike, James Pike, H. B. McCoy, as Collector of Customs in and for the Philippine Islands, Defendants.

Amended and Supplementary Complaint.

Now come the above named plaintiffs and for cause of action against the defendants above named, allege:

I.

That the above named plaintiffs are now, and at all of the times hereinafter mentioned have been co-partners engaged in business under the firm name and style of Erlanger & Galinger in the Philippine Islands, and are and have been at the said times, residents of the City of Manila, P. I.

II.

That the Swedish East Asiatic Co., Ltd., and the Sveriges Angfartyges Assurans Forening of Gothenburg are corporations duly organized and existing under and by virtue of the laws of the
4 Kingdom of Sweden, and that the defendant Oelwerke Teutonia herein sued by the fictitious name of John Pike is a corporation duly organized and existing under and by virtue of the laws of the Empire of Germany.

III.

That the true names of the defendants herein sued under the fictitious names of John Doe, Richard Doe, Henry Doe, Frederick Doe, Howard Doe, James Doe, Richard Pike, Henry Pike, Frederick Pike, Howard Pike and James Pike are at present unknown to plaintiffs, and plaintiffs respectfully pray that the true names of said defendants may be substituted for the said fictitious names when the same shall become known to these plaintiffs. That plaintiffs are informed and believe that said defendants are represented in the Philippine Islands by the following named persons and entities, to-wit: Ker and Company; E. Eggert; Behn, Meyer & Co., Ltd.; Struckmann & Co.; W. F. Stevenson & Co., Ltd.; Warner, Barnes & Co., Ltd.; Wise & Co.; Bruce, Lawrence, Ross & Block; Rohde and Wright; O'Brien and De Witt.

IV.

That the defendant H. B. McCoy, is now and at all of the times hereinafter mentioned has been the duly appointed, qualified and acting collector of customs in and for the Philippine Islands.

V.

That the defendants The Swedish East Asiatic Co. Ltd., John Doe, Richard Doe, and Henry Doe, are now, and at all of the times hereinafter mentioned have been the owners of the Steamship "Nippon", a vessel of Swedish register and of about 4,013 tons burden (gross register).

That the defendants Sveriges Angfartyges Assurans Forening of Gothenburg, Frederick Doe, Howard Doe, and James Doe are persons who, as insurers and underwriters of the said steamship "Nippon" claim to have some right, title or interest therein and in the subject matter of the present action, the true and exact nature of which is unknown to these plaintiffs.

That the defendants Oelwerke Teutonia, Richard Pike and Henry Pike are the owners of those certain goods, wares and merchandise hereinafter mentioned and referred to, which constituted the burden and cargo of said Steamship "Nippon" at the times and places hereinafter mentioned.

That the defendants Frederick Pike, Howard Pike and James Pike are persons who, as insurers and underwriters of the said cargo of the Steamship "Nippon" claim to have some right, title or interest therein and in the subject matter of the present action, the true and exact nature of which is unknown to these plaintiffs.

VI.

That on or about the 8th day of May, 1913, the said steamship "Nippon", whereof the said E. Eggert was then master, sailed from the port of Manila, P. I., for the port of Hamburg, Germany, via

the port of Singapore, Straits Settlements, having on board a cargo consisting chiefly of copra in bulk, camphor, straw matting, agar-agar, etc. etc.

VII.

That on or about the 9th day of May, 1913, and while the said steamship "Nippon" was pursuing her course from the said port of Manila, P. I., to the said port of Singapore, S. S., there ap-
6 proached a storm or typhoon which carried the said vessel from her true course, and stranded the same hard and fast upon the coral reefs commonly known and designated as Scarborough Reef, a ledge of coral rock, almost wholly submerged, situated at a point about 200 miles off the coast of the Island of Luzon.

VIII.

That upon the stranding of said vessel upon the reef aforesaid the said vessel was carried by the force of wind and wave, with her broadside upon the said ledges of rock, well up upon the same, and was there left with numerous holes, both great and small, broken in her bottom by repeated contact with the ledges of said reef, with about 10 feet of water in her holds, with a heavy list to starboard, with all of her boats lost save two damaged ones, with a heavy swell breaking over said vessel in her isolated and exposed position.

IX.

That thereafter, to-wit: on the 13th day of May, 1913, the said Steamship "Nippon" so stranded as aforesaid was simultaneously visited by the S. S. "Manchuria" and by the Coast Guard Cutter "Mindoro" of which the latter had been dispatched from the port of Manila by the Government of the Philippine Islands in response to demands of immediate assistance for saving the persons on board of said Steamship "Nippon". That the said S. S. "Nippon" was then and there wholly abandoned and left derelict by her master and crew, who deserted the said vessel by reason of the peril to their lives, and who elected to proceed to the port of Hongkong on board the aforementioned S. S. "Manchuria".

7 X.

That, thereafter, to-wit, on the 14th day of May, 1913, the above named plaintiffs chartered the Coast Guard Cutter "Mindoro" from the Government of the Philippine Islands for the purpose of effecting the salvage of said S. S. "Nippin" and the cargo thereof, or so much of the same as might be possible, and said plaintiffs, taking on board a full and sufficient complement of experienced and competent divers, wreckers, master mariners, stevedores and laborers, and a full and sufficient equipment of pumps, diving apparatus, timbers, cement, canvas, and the like, proceeded to the scene of the stranding

and abandonment of said S. S. "Nippon" and boarded said vessel and assumed possession thereof for the object and purpose of salving the said vessel and cargo.

XI.

That upon the arrival of said plaintiffs at the scene of said stranding and upon the boarding of said vessel for the purpose of said salvage operations, the said vessel lay totally deserted and totally disabled, with the combined weight of said vessel and cargo resting upon the various parallel ridges of coral rock, save at such times as the tumult of the waters, then and for many days thereafter still prevailing, lifted the said vessel repeatedly from her strand and receding, pounded her forcibly upon the rocks, starting and bending her stanchions and plates, and breaking the rivets by which the latter were secured in place, and threatening the total destruction of said vessel and cargo.

XII.

That notwithstanding the adverse conditions prevailing the said plaintiffs promptly and diligently undertook and prosecuted the work of salving and rescuing the said vessel and cargo from
8 their position of peril and danger. That by reason of the constant and tenacious efforts of the plaintiffs a large and appreciable portion of the cargo of said vessel, as hereinafter specifically detailed and enumerated, was safely brought to the port of Manila, and the said vessel was successfully and permanently refloated and brought to a safe anchorage in the said port of Manila.

XIII.

That the efforts and labors of the plaintiffs in effecting the salvage of said vessel and cargo were arduous, extensive and oppressive by reason of a variety of causes, a part of which were inherent in the nature of the task undertaken by said plaintiffs, and a part of which were imposed by the opposition and misconduct of the defendants, acting by and through their agents and representatives in Manila, P. I., in the Kingdom of Sweden, in the Empire of Germany and in the City of Washington, D. C. That an enumeration of said causes, is in part, as follows:

(*a*) That the site of the stranding of said vessel is removed not less than 200 miles from the nearest base of supplies, rendering it necessary for all supplies and equipment, including fresh water for steaming purposes, to be sought and obtained at said distance from the scene of operations;

(*b*) That the site of the stranding of said vessel is upon the high seas, rendering it necessary to conduct the salvage operations entirely from a floating base;

(*c*) That the site of the salvage operations was in the open, exposed to wind and wave, rendering it necessary to employ vigilance

and the services of additional vessels for the rescue, in stress of weather, of the lives of the numerous persons employed in said salvage operations;

9 (*d*) That the site of the salvage operations was infested with sharks, rendering dangerous and perilous that large portion of the salvage operations which was required to be done below the surface of the water;

(*e*) That the cargo of said stranded vessel consisted largely of copra in bulk, which mingled with the waters of the sea, fermented and produced in the holds of the vessel noxious gases and vapors which oppressed and impeded the labors and activities of the salvors;

(*f*) That the defendants herein have at all times herein mentioned done all within their power to thwart and impede the salvage labors of the plaintiff by wrongfully endeavoring to oust the plaintiff from such labors, employing to that end the intervention of their foreign governments, and that of the Government of the United States at Washington, D. C., thereby rendering it necessary for the plaintiffs to divide their attention between the due prosecution of said salvage service and the defense of their position as salvors of said vessel;

(*g*) That the defendants have at all times herein mentioned thwarted and impeded the salvage efforts of the plaintiffs by the circulation of false and misleading reports concerning the progress of said labors and the possibility of a successful outcome thereof thereby jeoopardizing the position of plaintiffs as salvors and rendering more difficult and costly the task of securing the services of the necessary laborers to perform the work of said salvage;

(*h*) That the defendants have at all times herein mentioned thwarted and impeded the salvage efforts of the plaintiffs by placing beyond the reach of plaintiff and withholding certain items and articles of equipment, useful and beneficial in the performance of said salvage operations.

10 XIV.

That the plaintiffs have been engaged in the due performance of said salvage operations from the 14th day of May, 1913, to the 26th day of July, 1913. That there have been employed, at the various times stated, in the work and service of said salvage, and at the risk and under the responsibility of the plaintiffs as such salvors the following plant and equipment, namely:—

S. S. "Corregidor," 36 days 18½ hours.
S. S. "Mindoro," 24 days 6 hours.
S. S. "Borongan," 23 days.
S. S. "Rizal" 14 days 3 hours.
S. S. "Basilan" 13 days.
S. S. "Vizcaya," 11 days 10 hours.
S. S. "Mauban," 1 day.
3 Lighters, 2 days.
2 Barges, 5 days.
Equipment (non-expendable), 50 days.
Materials (expended), P7,709.34.

Supplies (expended), P3,588.89.
Labor (expended), 758 men, P33,860.80.

XV.

That in the performance of said salvage services the plaintiffs have incurred an expense, for moneys reasonably and properly disbursed in the due and necessary course of said services the sum of One Hundred Thousand Pesos (P100,000.00) Philippines Currency, an itemized account whereof will be duly furnished by said plaintiffs.

11

XVI.

That by reason of said salvage services so rendered as aforesaid the plaintiffs at various times between the 17th day of May, 1913, and the 10th day of July, 1913, have safely brought to shore, and delivered unto the custody of the collector of customs at the Port of Manila, P. I., for the use and benefit of all concerned and subject to the lien of these plaintiffs items of the cargo of said S. S. "Nippon," constituting the entire portion of said cargo which the stranding and abandonment of said vessel did not destroy and render worthless, of a total value of One Hundred and Seventy-five Thousand Pesos (P175,000.00), more or less.

That various and sundry items of said cargo, by reason of the perishable nature or condition thereof, have at various times been sold at public auction by said Collector of Customs, to the highest bidder for cash, and the proceeds of said sales are now in the possession and custody of said Collector of Customs of the City of Manila, for the use and benefit of all concerned, and subject to the lien of these plaintiffs.

XVII.

That on the 2nd day of July, 1913, the plaintiffs succeeded in refloating the said S. S. "Nippon" from her said strand, and in towing the same in safety to the port of Olongapo, P. I., where the same has been placed in dock for the purposes of inspection and of the performance of such temporary repairs as were required to insure the further safety of said vessel pending and during her removal for the purposes of permanent repairs. That said temporary repairs have been duly made by the plaintiffs at the cost of approximately
12 P17,500, an itemized list of which will be duly furnished by these plaintiffs. That since the performance of said repairs the vessel has been brought by plaintiffs in safety to the port of Manila, where she now lies at anchor in the custody of the Collector of Customs for the use and benefit of all concerned.

XVIII.

That the total value of the said S. S. "Nippon," exclusive of the cargo thereof, was, at the time of the stranding thereof, on the 8th

day of May, 1913, approximately the sum of Five Hundred Thousand Pesos (P500,000.00) Philippines Currency, and the total value of said vessel as the same now lays at anchor in the Port of Manila is approximately the sum of Two Hundred and Fifty Thousand Pesos (P250,000.00), Philippine Currency. That since the commencement of the above entitled action, to-wit: on or about the 29th day of August, 1913, the defendants, Swedish East Asiatic Co., Ltd., and Sveriges Angfartyges Assurans Forening of Gothenburg, John Doe, Richard Doe, Henry Doe, Frederick Doe, Howard Doe, James Doe as owners and underwriters of the said S. S. "Nippon" her equipment and apparel have paid and satisfied unto plaintiffs herein in full the claim of the said plaintiffs for and on account of the salvage of said vessel, her equipment and apparel, and the above entitled action has been duly dismissed as to said defendants and each of them.

XIX.

That the plaintiffs herein are the sole persons interested as salvors of the said S. S. "Nippon" and the cargo thereof, and entitled to the salvage compensation due thereof.

13

XX.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this court.

Wherefore, the plaintiffs pray that process in the due form of law, according to the course of law and of this Honorable Court, in case of like nature, may issue against the defendants, Oelwerke Teutonia, Richard Pike, Henry Pike, Frederick Pike, Howard Pike, James Pike and H. B. McCoy, the last named as Collector of Customs in and for the Philippine Islands, and that this Honorable Court will be pleased to decree such a sum of money or proportion of the value of the cargo of said Steamship "Nippon" to be due to the plaintiffs as salvors, to-wit: in the sum of P100,000.00 as a compensation for their salvage services upon said cargo as shall seem meet and reasonable, together with their costs and expenses in their behalf sustained, and that the total amount of such compensation costs and expenses be declared to be a lien upon the said cargo as salved, and the proceeds of such portion thereof as may have been converted into cash by the Collector of Customs, and that in the event of the non-payment of said compensation, costs and expenses so declared, that the unsold portion of her cargo or so much thereof as may be necessary be ordered sold at public sale and the proceeds of such sale together with the proceeds of the sales already made as aforesaid be applied in payment and discharge of the said lien, and that plaintiffs may have such other and further relief as in law and justice it may be entitled to receive.

Manila, P. I., September 23, 1913.

HAUSSERMANN, COHN & FISHER,

(Signed) p. p. CHARLES C. COHN,

Attorneys for Plaintiffs.

14 UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila, ss:

Simon Erlanger being duly sworn deposes and says: That he is a member of the firm of Erlanger and Galinger, plaintiffs in the above entitled action; that as such he is familiar with the subject matter of the within action and with the affairs and operations of said firm; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge save and except as to those matters which are therein stated upon information and belief and as to those matters that he believes it to be true.

And deponent further sayeth that each and every one of the defendents in the said action is a non-resident of the Philippine Islands, save and except the defendant H. B. McCoy, herein sued in his official capacity as Collector of Customs, against whom no judgment for the payment and satisfaction of plaintiffs' claim is sought save and except as the said judgment may affect moneys and properties in his official custody in which the said defendant claims no right, title or interest.

And deponent sayeth that there is no other sufficient security for the claim sought to be enforced by this action, save and except such lien as the said plaintiffs may have for the services and expenditures mentioned in said complaint upon the property herein sought to be attached.

And deponent sayeth that the amount due to plaintiffs above all legal set-offs and counterclaims is as much as the sum which is prayed for in said complaint.

15 And deponent further sayeth that the property of the said defendants which is within the jurisdiction of this court and which is available for the purpose of an attachment issuing out of this court consists of the said S. S. "Nippon," her equipment and apparel, and of such portions of her cargo as have been duly salved, and of the proceeds of such portions of said salved cargo as have been converted into cash by the Collector of Customs in the manner described in the complaint herein.

(Sgd.) SIMON ERLANGER.

Subscribed and sworn to before me this 23rd day of September, 1913. Certificate of Registration No. F-45, issued at Manila, P. I., January 4th, 1913.

(Sgd.) JOHN W. HAUSSERMANN,
Notary Public.

My Commission expires December 31, 1916.

Doc. No. 408.
Page No. 90.
Reg. No. 1.

The process having issued, the defendant, Oelwerke Teutonia, appeared by counsel and on the 14th day of October, 1913, filed its

answer in writing to plaintiff's said amended complaint, which said answer is in words and figures as follows:

(Title of Court and Cause).

Comes now the "Oelwerke Teutonia," of the City of Hamburg, a corporation duly organized and existing by virtue of the laws of the German Empire and representing that it is the defendant sued in this action under the fictitious name of John Pike and the owner of all the copra mentioned in the amended and supplementary
16 complaint herein and answering the same as a first defense alleges:

I.

That the defendant is a corporation duly organized in pursuance of the laws of the German Empire and doing business in the City of Hamburg.

II.

That at the time of the stranding of the steamer "Nippon" as alleged in the complaint this defendant was the owner of the entire cargo of copra aboard the said steamer consisting of 1842.28 tons of the value of P400,000.00 Pesos, and is now the owner of all the proceeds of said cargo.

III.

This defendant admits the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 17 and 18 of the complaint.

IV.

This defendant denies the allegations in paragraph 8 of complaint except that the vessel was stranded on a reef.

V.

This defendant denies the allegations contained in paragraph 9 of the complaint, except that the "Nippon" was visited on the 13th day of May, 1913, by the S. S. "Manchuria" and Coast Cutter "Mindoro."

VI.

This defendant denies all the allegations contained in paragraph 10 of the complaint except that on the 14th day of May, 1913, the Coast Guard Cutter was chartered by the plaintiff from the
17 Government and that the plaintiff by means thereof took possession of the "Nippon" and her cargo.

VII.

This defendant denies the allegations contained in paragraph 11 of the complaint.

VIII.

This defendant denies the allegations in paragraph 12 of the complaint except that a portion of the cargo of the "Nippon" was brought to Manila and that the vessel was floated.

IX.

This defendant denies the allegations contained in paragraphs 13, 14 and 15 of the complaint.

X.

This defendant denies the allegations in paragraph 16 of the complaint except that the plaintiff has delivered to the Collector of Customs part of the cargo of the "Nippon" which has been sold as alleged and that the proceeds are now in the hands of the Collector for the benefit of all concerned.

XI.

This defendant denies the allegations contained in paragraphs 19 and 20 of the complaint.

As a second defense and counterclaim against the plaintiffs *and* defendant alleges:

I.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the German Empire and
18 doing business in the City of Hamburg.

II.

That the S. S. "Nippon" stranded on Scarborough reef at about 4 o'clock P. M. Thursday the 18th of May, 1913, and that this defendant at the time of said stranding was the owner of the entire cargo of copra aboard said steamer, consisting of 1842.28 tons of the value of P400,000.00, and is now the owner of the proceeds thereof; that on the morning of May 13, 1913, the said stranded steamer "Nippon" was first spoken by the S. S. "Manchuria," and the Master of the Nippon and remaining crew immediately went on board the said S. S. Manchuria; that after the Master and crew of the Nippon had embarked on the Manchuria, the Coast Guard Cutter "Mindoro," a government vessel of the Philippine Islands, arrived upon the scene on said morning of May 13th and offered to take the Master and crew of the Nippon to Manila; that the Master, E. Eggert, of the Nippon declined the offer to go to Manila on the Mindoro because of the well-founded opinion that better salvage vessels and apparatus could be obtained in the City of Hong Kong to which port the Manchuria was bound; that the said Master of the Nippon did not abandon

his ship with intention of not returning but on the contrary with the firm hope and intention of returning and recovering both vessel and cargo by means of appropriate salvage apparatus which he expected to obtain in the City of Hongkong or in the City of Shanghai or in Japan.

III.

This defendant further alleges that before the plaintiff incurred any expense or performed any service looking towards the salving of said steamer Nippon and her cargo the plaintiff well know that the Master of the Nippon was on board the Manchuria and that the Manchuria was approaching the City of Hongkong; defendant further alleges that there is and was at all times herein mentioned a telegraph cable from Manila to Hongkong and a radio wireless telegraph station at Manila and at Hongkong and that the S. S. Manchuria was equally provided with like apparatus, all of which facts were well known to plaintiffs before they incurred any expense or performed any labor looking towards the salving the Nippon and her cargo; defendant further alleges that by reason of the aforesaid facts the plaintiffs, at all times before incurring any expense of performing any labor, could have communicated with the Master of the Nippon and could have learned whether the Nippon was abandoned and whether the services of the plaintiff were desired for the salving of the same, but that the plaintiff on the contrary studiously refrained from learning the desire of the said Master and failed to make any effort to communicate with him; defendant further alleges that the services of the plaintiff were not desired for the assistance or salving of the Nippon and cargo, neither by the Master nor the owner of the vessel nor the owners of the cargo, and that on the 15th day of May, 1913, this defendant, acting through its agents the "Hamburg Board of Underwriters" with whom the said copra was insured and its agents Struckman & Company of Manila informed the plaintiffs that its services were not desired in the salving of the cargo, and protested then and there against the unsolicited and unauthorized action of the plaintiffs in interfering with the cargo of the stranded Nippon; that as soon thereafter as the Master of said Nippon had learned of the action of plaintiffs and could reach his stranded ship and as soon as the owners thereof could be represented in Manila the same likewise protested against the said action of the plaintiff.

IV.

This defendant further alleges that at the time plaintiff took possession of the steamer Nippon, as alleged in the complaint the said steamer was not in any immediate or imminent peril from dangers of the sea but that the sea was smooth and tranquil and the weather and prospects for future weather were good and that the ship rested on the northeast rim on Scarborough reef in an ordinary ship position with only a slight list, protected by reason of its position from the ordinary prevailing winds of the season and in no danger whatsoever,

except from a typhoon; this defendant further alleges that although there were during the month of May last means and apparatus for salvage work in Manila that such means were in no wise equal to the means obtainable in the cities of Hongkong or Shanghai or in Japan and that efficacious means for the salving of said steamer and cargo could more promptly have been obtained in said places than in Manila and could have been had aboard and alongside the Nippon within ten days from the stranding thereof all of which was well known to said Master of the Nippon and to all people of Manila having knowledge of affairs of the sea; this defendant further alleges that a typhoon is a rare occurrence in the China Sea before the month of July and very rare in the month of May and that except from a typhoon neither the said stranded Nippon nor her cargo was in any danger whatsoever, except that part of the cargo which was submerged in the holds of the ship.

21 This defendant further alleges that at all times hereinbefore mentioned there were in Manila a private person and a corporation, to-wit: Capt. Hessel and Robinson & Co., whose special occupation is the floating and salving of stranded and wrecked vessels and cargo-s in the waters of the Philippine Islands, and nearby places; that the said parties have many of the means for such work and know of all means to be had in the Philippine Islands and were and always have been in a position to obtain the same; that the said Capt. Hessel and Robinson & Company were anxious and willing at all times to float and salve the said Nippon and cargo and to do said services with experienced and competent men having thorough knowledge of the affairs of the sea, and that either said Robinson & Company, or Capt. Hessel could have saved the entire cargo of said copra.

VI.

This defendant further alleges that the plaintiff is an ordinary mercantile partnership and that the partners thereof are not seamen nor have they any knowledge of the affairs of the sea, and that the plaintiffs through confabulation with employees of the Bureau of Navigation obtained the first authentic knowledge and information of any persons in Manila of the real situation of the Steamer Nippon and her cargo and that thereupon, confederating and combining with certain employees of said Bureau of Navigation they took possession of said Steamer Nippon and her cargo and thereby prevented the greater part of said cargo from being saved by competent wreckers of Manila and others who refused to make salvage con-

22 tracts with this defendant or the Master or owners of the Nippon unless the possession of said ship or cargo could be delivered to them, which was rendered impossible because of the said conduct of plaintiffs.

VII.

This defendant further alleges that neither the plaintiffs nor any member of the firm nor any employee of the plaintiffs at any time

herein mentioned owned any means or implements proper or necessary for doing of salvage work nor possess any, not even primitive knowledge of salvage work; the defendant further alleges that of all the ships chartered by the plaintiffs the officers and crews were paid by the owners thereof and that the said ships were chartered at ordinary current rates and officers and crews were paid by the owners the usual compensation and that the said ships were instructed to avoid all unusual risk or hazard in the saving and floating of said Nippon and cargo.

VIII.

This defendant further alleges that the weather along the entire coast of Luzon and on Scarborough Reef from the 15th day of May, 1913, to July 1st, 1913, was good and the sea tranquil and that at all times during said time large barges could have been laid alongside the Nippon for the reception of the copra cargo and by that and other means the entire cargo of copra could have been taken from the said Nippon before the 1st day of June, 1913, and the entire cargo could have been saved; but that the ships chartered by the plaintiff frequently stood off a long distance from the Nippon and the copra was transported from the Nippon to said ships in
23 . ordinary ship's boats a few sacks at a time and in one inferior scow; that the copra submerged in the holds of the Nippon could have been hoisted by means of the ship's cranes and clamshells to be had in Manila directly into large barges alongside and could all have been taken from said Nippon before the 1st of June and could all have been saved with little damage; that the plaintiff through its ignorance, incompetency, negligence and inadequate*d* means and overcaution for the safety of the ships employed in the salvage work only saved 1,296.36 tons of the said copra of the value of only P146,737.06, because the greater portion of said copra saved had been seriously damaged by the prolonged submersion in the holds of the Nippon. This defendant further alleges that if the plaintiffs had proceeded with ordinary care and diligence and had possessed the ordinary knowledge and skill necessary in the performance of salvage services, then the entire cargo of copra could have been taken from said Nippon and salved by the 1st of June, 1913, in a good and marketable condition, and that if said cargo of copra had been removed from said Nippon before the 5th day of June, 1913, the same would still have been of the value of P324,169.00, but that the plaintiff through its want of skill and knowledge, and by reason of its negligence and incompetence failed to salve a great portion of the said cargo of copra, to-wit: 545.92 tons of the value of P118,395. which said quantity of copra was jettisoned by plaintiffs and became a total loss to this defendant all to the damage of this defendant in the sum of P177,432.00.

IX.

This defendant further alleges that but for the interference of the plaintiffs the entire cargo of copra would have been taken from

said Steamer Nippon and salved before the 5th day of June, 1913, by the Master thereof and this defendant.

24 X.

This defendant further alleges that the partnership existing between the plaintiffs is an ordinary mercantile partnership in no wise connected with, or engaged in the business of wrecking or the salving of ships, cargo or persons, and that the steamships Corregidor, Mindoro, Rizal and Basilan are vessels of the Government of the Philippine Islands, and that all the salvage services performed by plaintiffs as alleged in the complaint were in greater part performed by means of the ships, crews and apparatus of the Government of the Philippine Islands and that the plaintiffs never were responsible for the safety of said vessels or apparatus while engaged in said services and that the plaintiffs never were responsible for the safety of any other vessel or implement engaged in said salvage service and that all said vessels, apparatus and implements were the property of other persons than the plaintiffs.

Wherefore this defendant prays that the Insular Collector of Customs be ordered to pay to this defendant the proceeds of the said cargo of copra now in his custody, and further that this defendant have judgment against the plaintiffs in the sum of P177,432.00 for damage done to said cargo of copra by their unauthorized interference therewith and their negligent and unskillful conduct in said salvage operations.

Manila, P. I., October 14th, 1913.

(Sgd) ROHDE & WRIGHT,
Attorneys.

That on the 2nd day of January, 1914, the following stipulation was filed on behalf of plaintiff and of the defendant, Oelwerke Teutonia:

25 (Title of Court and Cause.)

" Now come Erlanger & Galinger and Oelwerke Teutonia, the only " parties interested in the proceeds of the copra salved from the S. S. " 'Nippon', which amounts to the sum of P142,657.05, as appears by " the supplemental answer of the Insular Collector of Customs, and " petition the Court to direct the defendant Collector of Customs to " deposit said amount with the Hongkong Shanghai Banking Cor- " poration in Manila to abide the event of this suit. Manila, P. I., " Jan. 2nd., 1914. (Sgd) Rohde & Wright, Attorneys for Oelwerke " Teutonia. Haussermann, Cohn & Fisher, pp. F. C. Fisher, Attor- " neys for Erlanger & Galinger."

On the 6th day of January, 1914, the Court of First Instance of the City of Manila entered an order upon the said stipulation above set forth, which order is in words and figures as follows:

(Title of Court and Cause.)

"Order. Motion having been made and duly brought on for hear-
"ing asking that the Insular Collector of Customs be directed to de-
"posit the funds in his hands derived from the copra salved from
"the S. S. 'Nippon' with the Hongkong & Shanghai Banking Corpo-
"ration, and counsel for the interested parties being present in court
"and no reason appearing to the contrary,

"It is ordered that the Insular Collector of Customs deposit with
"the Hongkong & Shanghai Banking Corporation the funds in his
"hands received from the sale of copra salved from the S. S. 'Nip-
"pon', said to be the sum of P142,657.05, upon the best terms pos-
"sible in the interest of the fund. Manila, P. I., January 6,
26 "1914. (Sgd) A. S. Crossfield, Judge."

That thereafter, to-wit, on the 19th day of January, 1914, plaintiff and the defendant, Oelwerke Teutonia, entered into a stipulation in words and figures as follows:

(Title of Court and Cause.)

"Now come the parties in the above entitled cause by their attor-
"neys and respectfully request that the Hongkong & Shanghai
"Banking Corporation be designated by this Honorable Court as the
"custodian of the proceeds of the sale of the copra salved from the
"S. S. 'Nippon' by the plaintiffs, to be held subject to the final judg-
"ment to be rendered herein, and that upon proof by the Collector
"of Customs of the delivery of the funds now in his possession, de-
"rived from the sale of such salved copra, to the said Hongkong
"& Shanghai Banking Corporation, that he be relieved from any fur-
"ther responsibility for such fund. Manila, P. I., January 19th,
"1914. Haussermann, Cohn & Fisher, Attorneys for plaintiff.
"Rohde & Wright, Attorneys for Oelwerke Teutonia."

That thereafter, to-wit, on the 19th day of January, 1914, the Court of First Instance of Manila entered an order upon the foregoing stipulation in words and figures as follows:

(Title of Court and Cause.)

"Upon the request of the parties to the above entitled cause the
"Hongkong & Shanghai Banking Corporation is hereby designated
"as the custodian, subject to the orders of this Court, of the pro-
"ceeds of the sale of the copra, salved from the S. S. 'Nippon', said
"to be the sum of P142,657.05, now in the hands of the Col-
27 "lector of Customs. Upon delivering the said fund to the
"custodian herein designated the Collector of Customs will be
"relieved of all further responsibility for the same. Manila, P. I.,
"January 19th, 1914. (Sgd) A. S. Crossfield, Judge."

That thereafter, on the 29th day of January, 1914, the said cause came on for trial before the Court of First Instance of Manila, the Honorable A. S. Crossfield presiding, on which date and the succeeding days upon which the hearing was continued, plaintiff appeared by its attorney-, Messrs. Charles C. Cohn, and F. C. Fisher, and defendant, Oelwerke Teutonia, by its attorney, Wm. J. Rohde, at which trial evidence oral and documentary, was introduced on behalf of the respective parties, and proceedings were had as follows:

It was stipulated in open court that the report of the Director of the Philippine Weather Bureau, dated January 28, 1914, regarding the weather conditions in the Philippine Islands, and vicinity in the months of May and June, 1913, be admitted in evidence on behalf of plaintiff as plaintiff's Exhibit "A", and it was further stipulated in open court that the facts set forth in said report are true. Said report is in words and figures as follows:

"The Government of the Philippin- Islands, Weather Bureau, "Central Office, Manila. January 28th, 1914. The Director of the "Weather Bureau of the Department of the Interior of the Govern- "ment of the Philippine Islands certifies that the records of this "Bureau show:—

28 "1. That since the year 1880 there have been approxi- "mately 18 baguios or cyclones in the Philippine Archipel- "ago and vicinity in the month of May. Depressions of little im- "portance have not been included.

"2. That since the year 1880 there have been approximately 16 "baguios or cyclones in the Philippine Archipelago and vicinity in "the month of June. Depressions of little importance have not been "included.

"3. That the track of the typhoon of May 3 to 11th, 1913, in the "Philippine Archipelago and vicinity is correctly shown upon the "plate hereunto annexed, taken from page 117 of the Meteorological "Bulletin of the Philippine Weather Bureau for the month of May, "1913.

"4. That the said plate also shows the typical tracks of typhoons "in the locality shown thereon for the month of May.

"5. That no other cyclone or baguio, other than the one prevailing "on May 3 to 11th, 1913, visited the Philippine Archipelago during "that month.

"6. That the month of June, 1913, was remarkable as being one "of the rare occasions in which during the month of June no baguio, "typhoon or depression occurred in the whole Far East south of "25 deg. latitude N. (Bull. for June, 1913, page 156).

"7. That the area of violent wave disturbance caused by baguios "or cyclones varies, according to the intensity and extension of the "storm, from 20 to 120 miles from the track of the cyclone.

"8. That warning of the approach of cyclone is given to the public "at Manila from 2 to 5 or 6 days in advance with respect to

29 "cyclones which form outside of the Archipelago; that in the "event of the occurrence of the original depression within the "Archipelago little or no advance warning can be given to places

" near the point at which the atmospheric disturbance originates.
" (Sgd) José Algué, Director of Weather Bureau."

It was thereafter stipulated in open court that certified copies of the correspondence relating to the wreck of the S. S. "Nippon" between the ship's officers and crew, the owners, the agents, the Bureau of Navigation of the Philippine government, and the plaintiff herein relating to the wreck and salvage of the said steamship, be admitted in evidence and that the statements contained therein be considered by the Court with the same effect as though the persons by whom the letters and telegrams composing said correspondence are signed, had appeared in court and testified to the facts therein set forth under oath. Said correspondence, marked for identification as plaintiff's Exhibit "B" is as follows:—

" Santa Cruz, Zambales, May 12, 1913. Director of Bureau of
" Navigation, Manila. Nippon stranded on Scarborough Reef, wants
" immediate assistance for saving crew boats gone. 12:15 p. m.
" (Sgd) R. Westin."

" Manila, P. I., May 12, 1913. Sir. When ready for sea in all
" respects and the Captain of the Yard and Ben Taylor are aboard,
" you will proceed to Scarborough Shoal and render all assistance
" you can to the S. S. Nippon, which is reported stranded there. It
" is reported that all her boats are gone and you will take an
30 " extra life boat with you, also life gun and plenty of charges;
" also take a quantity of extra life buoys. If requested, you
" will take the crew aboard and bring them to Manila. (Sgd) Frank
" P. Helm, Director of Navigation. The Commanding Officer, Cut-
" ter Mindoro, Manila."

" Manila, May 12, 1913. Brannagan, Baguio. Following wire
" received from Santa Cruz, Zambales, from Chief Officer S. S. Nip-
" pon quote Nippon stranded on Scarborough Reef; wants imme-
" diate assistance to save crew. Boats gone. Signed R. Westin end
" quote. Wire received twelve fifteen, Mindoro left with Marine Su-
" perintendent, life saving apparatus, supplies one o'clock. (Sgd)
" Helm."

" Santa Cruz, Zambales, May 12, 1913. Director, Bureau of Navi-
" gation. Manila. Please wire today our expense if assistance solic-
" ited for Nippon stranded Scarborough is forthcoming. State time
" of departure of help from Manila, men need assistance badly. Re-
" spectfully requested rescue boat to stop Santa Cruz on her way back
" to pick up rest of crew here. 2.44 p. m. (Sgd) R. Westin, Chief
" Officer."

" Baguio, May 12, 1913. Helm, Manila. Osmeña left for Manila
" yesterday. What steamer is Nippon. Unknown here unless Nip-
" pon Maru. Please advise. 3.07. (Sgd) Ross."

" Manila, May 12, 1913. Ross, Baguio. Nippon Swedish steamer
" three hundred eighty feet long, four thousand tons. Left Manila
" Sixth with copra for Hamburg via Singapore. (Sgd) Helm."

31 " Santa Cruz, Zambales, May 12, 1913. Captain Rydell,
" Care Bureau of Navigation, Manila. Nippon stranded Scar-
" borough Reef, crew in need of immediate assistance, kindly do

" your best to obtain same from Director Bureau of Navigation.
' Please wire us here if help is forthcoming. 3.21 p. m. (Sgd) R.
' Westin."

" Manila, May 12, 1913. Westin, Santa Cruz, Zambales. Coast
' Guard Cutter left one thirty, Manchuria at three. Wire details
' condition of vessel when you left her. (Sgd) Helm."

" Santa Cruz, Zambales, May 12, 1913. Lighthouse Inspector,
' Bureau of Navigation, Manila. Arrived this morning in boat ten
" European crew and officers steamer Nippon stranded ashore Scar-
" borough May 8th. (Sgd) M. Mon, Lightkeeper. 5.30 p. m."

" Santa Cruz, Zambales, May 12, 1913. Director, Bureau of Nav-
" igation, Manila. Left with 9 hands at noon 9th, 26 men still on
" board, ship well on reef, stern part afloat, about 10 feet of water in
" holds, starboard list, heavy swell breaking over, little hope of
" saving ship. (Sgd) Westin. 6.27 p. m."

" Signal Corps Radio Station, Manila, P. I., May 12, 1913. Cap-
" tain Dixon, Manchuria. Please communicate with Captain Min-
" doro. If not possible Captain Mindoro ask Captain Nippon tell
" Captain Mindoro en route back to Manila to stop Santa Cruz pick
" up Chief Officer Nippon and nine men. Latest report twenty-six
" men still on Nippon. Ship well on reef. Stern part afloat. Ten
" feet water in holds. Starboard list. Heavy swells breaking over.
" Little hope of saving ship. Thanks for assistance. (Sgd)
" Helm."

32 " S. S. Manchuria, May 13, 1913. All rescued from the
" Nippon. Stranded on extreme north end of shoal. Vessel
" stranded May 9th. She is full of water fore and aft and is badly
" ashore. Ship abandoned. Proceeding Hongkong. (Sgd) Dixon,
" Master. 9.40 a. m."

" S. S. Manchuria, May 13, 1913. Have just left the wreck for
"Hongkong. Gave Mindoro orders proceed to Santa Cruz. Inform
" Helm. 27 of crew of Nippon rescued. All are well. (Sgd) Dixon,
" Master. 10:00 a. m."

" S. S. Manchuria, May 13, 1913. Solano, Manila. Berger on
" Manchuria. Saved Berger. (Sgd) Dixon, Master. 12:10 p. m."

" S. S. Manchuria, May 13, 1913. Solano, Manila. Bulletin. Ma-
" nila. Among rescued Swedish Nippon Berger Manila passenger.
" (Sgd) Dixon, Master."

" Manila, May 13, 1913. Westin, Santa Cruz, Zambales. Received
" wireless from Manchuria this morning, all rescued from Nippon
" and ship abandoned. Will arrange transportation for yourself
" and crew soon as possible. (Sgd) Helm."

" Manila, May 13, 1913. Sir. As per your request I beg to quote
" below telegrams received from the Chief Officer of the Swedish
" Steamer Nippon, which is stranded on Scarborough Shoal: 'Santa
" 'Cruz, Zambales, May 12, 1913. Director of Bureau of Navigation,
" 'Manila. Nippon stranded on Scarborough Reef, wants immediate
" 'assistance for saving crew, boats gone. (Sgd) Westin.' "

33 " 'Santa Cruz, Zambales, May 12, 1913. Director of
" 'Bureau of Navigation, Manila. Left with 9 hands at noon
' 'the 9th, 26 men still on board, ship well on reef, stern part afloat,

" 'about 10 feet water in holds, starboard list, heavy swell breaking
" 'over, little hope of saving ship. (Sgd) R. Westin.'

" Your action in authorizing the Captain of the Manchuria to
" call by and render any assistance necessary and also to wire Manila
" of the Nippon's condition is highly appreciated. Very respect-
" fully. (Sgd) Frank P. Helm, Director of Navigation. Mr. J. L.
" Davis, Pacific Commercial Company, Manila, P. I."

" Manila, May 13, 1913. Sir. I have the honor to quote below
" telegram received from R. Westin, Chief Officer of the Swedish
" Steamer Nippon. 'Santa Cruz, Zambales, May 12, 1913. Director
" 'of Bureau of Navigation, Manila. Nippon stranded on Scar-
" 'borough Reef, wants immediate assistance for saving crew, boats
" 'gone. (Sgd) R. Westin.' Immediately upon receipt of this
" telegram I dispatched the Mindoro to the assistance of the Nippon.
" I also informed the Captain of the Manchuria of the matter and
" the agents of the Manchuria authorized Captain Dixon to go by
" Scarborough Shoal to offer any assistance possible and send a wire-
" less to Manila giving details of the Nippon's condition. The fol-
" lowing telegram was received later at about 6.30 last night: 'Santa
" 'Cruz, Zambales, May 12, 1913. Director, Bureau of Navigation,
" 'Manila. Left with 9 hands at noon the 9th, 26 men still on
" 'board, ship well on reef, stern part afloat, about 10 feet
34 " 'water in holds, starboard list, heavy swell breaking over,
" 'little hope of saving ship. (Sgd) R. Westin.' The above
" is sent you for your information. Very respectfully. (Sgd)
" Frank P. Helm, Director of Navigation. The Insular Collector of
" Customs, Bureau of Customs, Manila, P. I. (Copy to The Eastern
" Pacific Trading Company, 20 Escolta)."

" Manila, May 13, 1913. Sir:—Confirming my letter of even
" date, relative to the stranding of the Swedish Steamer Nippon on
" Scarborough Reef, I beg to quote below telegram received this
" morning from Captain Dixon of the S. S. Manchuria:—'Man-
" 'churia, May 13, 1913. 9.40 a. m. All rescued from the Nippon.
" 'Stranded on extreme north end of shoal. Vessel stranded on May
" '9th. She is full of water fore and aft and is badly ashore. Ship
" 'abandoned. Proceeding Hongkong. (Sgd) Dixon, Master.'
" Very respectfully, (Sgd) Frank P. Helm, Director of Navigation.
" Insular Collector of Customs, Manila. (Copy to The Eastern and
" Pacific Trading Co., 20 Escolta."

" Baguio, May 14, 1913. Frank P. Helm, Manila. Place what-
" ever assistance possible at disposal Erlanger and Galinger to salve
" Nippon. Advise them what you are able to do. 7.29 p. m. (Sgd)
" Forbes."

" Manila, P. I., May 14, 1913. The Director of Navigation, Ma-
" nila. Dear Sir. We have the honor to request that you please
" charter us one of your cutters for the purpose of sending a party
" to board the stranded and abandoned steamer Nippon, this
35 " charter to remain effective until cancelled by us. Very
" respectfully, (Sgd) Simon Erlanger. (A. S. T. O. K.
" Let them have the Mindoro @ P225. per day until released by the
" charterer.)

"Manila, May 14, 1913. Sir:—When ready for sea in all respects "and Mr. Ben Taylor, representing Erlanger & Galinger, is aboard, "you will proceed to Scarborough Reef, where you will land Mr. "Taylor upon the S. S. Nippon, which is stranded on that reef. "You will also leave one life boat and about ten men with Mr. "Taylor. After completion of this duty, return to Manila. Very "respectfully, (Sgd.) Frank P. Helm, Director of Navigation. "The Commanding Officer, Cutter Mindoro, Manila, P. I. Copy to "Chief of Division of Accounts, who will bill this service against "Erlanger & Galinger. Mr. Taylor has been dropped from the pay "roll of this Bureau, effective at the close of May 10th, he being in "the employ of Erlanger & Galinger from that date. The time of "the men left aboard the Nippon by the Mindoro will also be billed "against Erlanger & Galinger. (Sgd.) Frank P. Helm, Director "of Navigation."

"Manila, P. I., May 14, 1913. We, the undersigned officers and "part of the crew of the Swedish Steamer Nippon, do hereby declare "that the S. S. Nippon struck on Scarborough Reef about four "thirty on the afternoon of Thursday, May 8th, 1913. Two of her
"boats were lost after we struck the reef, leaving only two
36 "aboard and those damaged. The ship was filling with
"water and pounding on the reef and we considered her a "wreck. In company with the Chief Officer, we left the ship about "noon on Friday, May 9th, 1913, in a small boat and reached Santa "Cruz, Zambales, a distance of 130 miles, on the morning of Mon- "day, May 12th, 1913, and immediately the Chief Officer wired to "the Director of Navigation at Manila for assistance to rescue the "balance of the crew left aboard the Nippon, as we considered their "lives in danger and the ship a wreck, with little hope of saving "her. (Signed) F. Carman, G. E. Johansson, W. Bratt, B. Nyol- "ram, A. G. Ericksson, F. Palma, J. Karlberg, E. Thulin, E. "Pettersen."

"Manila, P. I., May 14, 1913. Mr. Frank P. Helm, Director of "Bureau of Navigation. Sir:—We are acting as agents for the "underwriters of the Swedish Steamer Nippon on Scarborough Reef "and shall be very much obliged if you will kindly let us have a "report of the Captain of the Coast Guard Cutter Mindoro as soon "as she arrives in Manila this afternoon, particularly with respect "to a possibility of the salvage of the cargo. Your kind co-operation "to this effect will be very much appreciated by Yours respectfully, "(Sgd.) Struckmann & Co., Agents Board of Hamburg Under- "writers. (Mr. Helm talked to Mr. Kauffeldt and 1st Officer Westin "personally.) A. S. T."

"Manila, P. I., May 15, 1913. Sir:—We regret to inform you "that in consequence of you not having given us the information "of the arrival of the Coast Guard Cutter Mindoro in Manila as
"requested in our letter of yesterday, the Underwriters we
37 "have the honor to represent have been put to much incon-
"venience and possibly to great and unnecessary loss. We "request you to kindly notify us why we have not been notified by "your office of the arrival of the Mindoro as requested. You told

"us in your private residence last evening that the Captain of the "Mindoro had only given a verbal report while we of course ex- "pected a written report in view of the importance of the matter "relying on the well known tendency of the Government to help "legitimate trade. But in the absence of a written report we shall "consider it a favor if you will reproduce us in writing the main "features of the verbal report, the Captain of the Mindoro made "with regard to the condition of the S. S. Nippon and with respect "to the rescue of part of her crew she brought to Manila. We hope "you will see your way to give this matter your immediate atten- "tion. Respectfully, (Sgd.) Struckmann & Co., Agents Board of "Hamburg Underwriters. Mr. Frank P. Helm, Director of Bureau "of Navigation, Manila."

"Manila, May 16, 1913. Gentlemen:—I have to acknowledge "receipt of your letter of May 15th, received at 9.50 a. m., May 16th, "although registered and sent by special delivery. In regard to the "first paragraph in your letter, I have to state that you were well "aware of the arrival of the Mindoro and were told that she was here

"and that she had been chartered. Your innuendo in this
38 "particular paragraph is not understood—likewise the second
"paragraph, which requests that you be informed why your "office was not notified of the arrival of the Mindoro as requested. "I can only reiterate what I stated above that you knew the Mindoro "was here as you were in the Marine Superintendent's office and "told that she was here. I have not seen the Captain and have had "no written report from him but, when he arrives today, I will have "him make out a written report on the condition of the ship as he "found her, although it is not his business to make such report as "he is not a surveyor and not competent to say whether it is possible "to salve the ship or not and, personally, I would not place any "reliance on the recommendation of a person not familiar with "wrecking vessels or with the salvage business. This Bureau has, "at all times, endeavored to help legitimate business but it is impos- "sible to teach people to help themselves. If you had chartered the "boat at the time First Officer Westin telegraphed from Santa Cruz "or had intimated that on the return of the boat you desired to "charter her, she would have been reserved for you. I am not in a "position to show any favoritism and, as Erlanger & Galinger first "asked for the vessel, she was naturally given to them and, having "no other boat available whatever, I had to tell you so. As I have "said before I could place no reliance whatever on recommendations

"as to salving the vessel in a written report of the Captain
39 "and officers of the Mindoro, as they are not competent to
"pass on this sort of work, but I will have a written report "made and sent to you as requested.

"In the last part of your letter you request that I give in writing "the main features of the verbal report of the Captain of the Min- "doro with regard to the condition of the Nippon and with respect "to the rescue of part of her crew which she brought to Manila. "There is nothing further I can give you as I am not familiar with "the condition of the wreck and nothing further than is shown by

" telegrams received at this office. I am enclosing copies of all these " telegrams and all correspondence which we have on the subject of " the Nippon. As far as I am personally concerned, I believe we " have done everything in our power to assist you and, had you been " half as willing to help yourselves as we have been to help you, " things would, no doubt, have an entirely different phase at the " present time. Any further information which you may request, I " will be very glad to furnish you and the very first available boat " that comes in you will be given the charter of. Respectfully, " (Sgd.) Frank P. Helm, Director of Navigation. Struckmann & " Company, Manila, P. I."

" Manila, May 15, 1913. The Director of Navigation, Manila, "P. I., Sir:—The receipt is acknowledged of your communications " (2) of the 13th instant, quoting telegrams received from the Chief " Officer of the Swedish steamer Nippon and from the Master
40 " of the S. S. Manchuria, relative to the first named vessel. " Your courtesy in transmitting the information is appreci- " ated. Respectfully, (Sgd.) J. S. Stanley, Acting Insular Collector " of Customs."

" S. S. Mindoro, Manila, P. I., May 16, 1913. Sir:—I have the " honor to make the following report of voyage made to Scarborough " Reef May 12th to 14th, 1913, for officers and crew of the S. S. " Nippon.

" May 13, 1913, being 2½ miles south of reef, I observed S. S. " Nippon stranded on the N. E. edge of reef. I immediately steered " northward around the western edge of reef and arrived off stranded " ship at 9:30 a. m. S. S. Manchuria was laying to about 1½ miles " northward of reef, making signals for me to come alongside. I " immediately proceeded out to the Manchuria; upon arrival along- " side the Manchuria the Captain of same ship informed me that the " S. S. Nippon was abandoned and that he had the Captain and crew " on board for Hongkong. I then asked the Captain of the Man- " churia if the Captain of the Nippon cared to go to Hongkong, as " I was there to bring him and the crew to Manila if he desired to go. " The Captain of the Manchuria again informed me that the Captain " of the Nippon intended to go to Hongkong. I answered 'All right, " 'I will then go and have a look at the Nippon and see how badly " 'she is wrecked.' The Captain of the Manchuria made the remark " that she was half full of water and that she was very badly wrecked, " but that there was still some baggage left on board. He
41 " also informed me that he had a wire from the Director of " Navigation ordering me to proceed to Santa Cruz to pick " up boat's crew from Nippon. I said 'All right, I will go and get " 'baggage and have a look at the wreck.' I then left the Manchuria " and steamed over to the wreck. On arrival alongside of the wreck " I took on board all baggage packed standing on deck and sounded " around the ship, fore and aft, finding 11 feet of water forward at " low water and 20 feet aft in Board, gradually decreasing from " forward to aft and I found in holds about 8 feet of water, and the " cargo, as far as I could see, on top, was nice and dry, and it is my " opinion that with the position the ship is laying in and with the

"S. W. monsoon blowing the ship and most of the cargo can be "salved if work is started before the heavy typhoon season sets in. "After leaving the wreck I proceeded to Santa Cruz and picked up "the First Officer and crew of nine men and brought them to "Manila. On my second trip to the wreck, May 15th, I examined "the Nippon more fully and I believe that if the cargo is taken out "the ship can be saved after the holes are patched up, if this is done "before the heavy weather sets in. Very respectfully, (Sgd.) Geo. "Anderson, Captain, Mindoro. The Director of Navigation, Manila, "(Copy sent to Struckmann & Company, May 16, 1913. (Sgd.) "A. S. Thompson, Chief Clerk)."

"Baguio, May 16, 1913. Helm, Bureau of Navigation, Manila. "German Consul reports Struckmann Company claiming owner-
"ship cargo Nippon as underwriters agents wire him that
42 "Erlanger & Galinger plans seizure vessel and cargo. They
"ask protection. Nippon outside our jurisdiction but suggest "'that you see Struckmann and rent cutter as private vessel if desired "and available. (Sgd.) Welch, Assistant Executive Secretary. "12.40 p. m."

"Manila, May 16, 1913. Welch, Baguio. Ship was abandoned "by officers and crew. Underwriters were given opportunities by "shipping firms to charter vessels which they refused to do until "after Erlanger and Galinger chartered the Mindoro. Vessel is "now in their possession and they are salving her for benefit of all "concerned. Prompt action was necessary if possible typhoon "damages and loss of ship and cargo was to be avoided. Have had "several interviews with Struckmann & Company and they have "been told they can have first cutter available. Have nothing avail-"able at present. Understand they have chartered Poizat to go "to site of wreck. My understanding is anyone undertaking work "first can do the salvage voluntarily and afterward claim percentage "of salvaged cargo and vessel for services rendered. I did not "charter Mindoro until after consulting Kincaid Bruce and Cohn. "Underwriters have left their foot slip and are now worried on "account of Erlanger and Galinger having gotten ahead of them. "We are not showing any favoritism to anybody. Vizcaya left "today with wrecking materials and sacks with intent to salve cargo "and attempt to float vessel. Believe everything will be adjusted "equitably. Do not believe it to be our place to interfere with any
"arrangements Erlanger and Struckmann may make. We
43 "are only acting as charterers. (Sgd.) Helm."

"Baguio, May 16, 1913. Helm, Manila. Your telegram "about what I guessed and told German Consul. Have put whole "matter in Carpenter's hands. (Sgd.) Welch. 5.41."

"Manila, May 16, 1913. Sir:—When ready for sea in all re-"spects, as requested by Messrs. Erlanger & Galinger, and you have "stores requested for the men on the Vizcaya and the forty laborers "which were put ashore from the Vizcaya, aboard, and all nec-"essary provisions, etc., proceed to Scarborough Reef. Turn the "laborers over to Erlanger & Galinger's representative, Mr. Ben "Taylor, aboard the Nippon—also the stores. Get all the packing

" cases out of the iron room, and fill up whatever space you have with " dry sacked copra and bring all to Manila. Consult with the man " in charge of the salvage and if they require any further material, " bring back the necessary data. I desire you to get out as soon as " possible—make every effort to get away this afternoon. On re- " turn to Manila, manifest your cargo and turn the manifest over " to Erlanger & Galinger for presentation to the Custom House. " Nothing can be landed from this vessel without authority from " the Custom House and, hereafter, if you make any further trips " to Scarborough Reef, it will be necessary for you to clear from the " Custom House, just the same as other commercial vessels. Watch " your barometer and other weather indications and avoid being " caught away from shelter in bad weather, especially at night. " Very respectfully, (Sgd.) Frank P. Helm, Director of Navigation. " Capt. Geo. Anderson, Cutter Mindoro, Manila. (Copy to Messrs. " Erlanger & Galinger)."

44 " From Ynchausti & Company, Manila, May 17, 1913. " Mr. Frank P. Helm, Director of Navigation, Manila, Sir:— " I have the honor to inform you that before Ynchausti & Company " chartered the S.S. Vizcaya to Messrs. Erlanger & Galinger, I called " up Messrs. Patrick Miller and C. B. Nelson, Surveyors of Veritas " and other insurance companies, on Monday, May 12, 1913, and " proposed to them that they charter the S.S. Elcano for the purpose " of going out to take charge of the wrecked S.S. Nippon. They " stated that they had no orders to go out and would not accept the " charter. I called them up again the next day and told them that " if they intended to do anything they had better hurry up as it " would be too late if they waited any longer, as somebody else would " get out there ahead of them. I told them the charter of the " Elcano was still open to them; they again declined to have any- " thing to do with it, stating that they had tried to get the insurance " people to order them to go out but that so far the insurance people " would not give them the orders. The Elcano was then given " other work and was not open for charter after they declined her the " second time. Very respectfully, (Sgd.) C. Defer."

" Manila, May 20, 1913. The Director of Navigation, Manila. " Dear Sir:—We beg to request that if you have available another " one of your cutters that the same be chartered to us for the pur- " pose of assisting us in salvage work at the Steamer Nippon. Yours " truly, (Sgd.) Simon Erlanger. O. K. (F. P. H.)"

45 " Manila, May 20, 1913. Mr. Frank P. Helm, Director " of Navigation, Manila, P. I., My dear Mr. Helm:—In reply " to a letter of Mr. Arthur S. Thompson, Chief Clerk of your Bu- " reau, I beg to state that the weather conditions prevailing during " the afternoon of the 6th day of May till noon of the 7th were set " forth in the note issued by this Bureau at 11:30 a.m., of the 6th. " 'Weather stormy around Mindoro Island and north of the Sulu "Sea with heavy rains.' The position of the center of the typhoon " was given in a warning sent to all the shipping firms and published " in all the papers on the 6th at 10 a.m. 'The typhoon is at present " near or over Romblon Island moving W.N.W.' The third storm

"signal was hoisted in Manila, Corregidor, Cavite and Mariveles at "10:20 of the 6th and was not lowered at Corregidor until 8 a.m. "of the 8th. The position of the center of the typhoon given in "the warnings has been found accurate according to the observa- "tions received from land and sea, so that the vortex was about 65 "miles S of Cabra Island and less than 110 miles S.W. of Corregidor "when the S.S. Nippon left Manila at 7 a.m. of the 7th. For large "vessels only was navigation considered safe in the inter-island "seas, as stated in a note issued at 10:30 a. m. of the 7th and cap- "tains were advised to leave Manila in the afternoon of the 7th if "they were bound for the northern China sea, but under no con- "sideration would it be wise to leave Manila during the morning of "the 7th if bound for Singapore or on a southerly course. Very

"respectfully, (Sgd.) Jose Algue, Director, Weather Bu-
46 "reau."

"Manila, May 21, 1913. Memorandum for the Director "of Navigation:—As directed by you I called up Mr. Struckmann "of Messrs. Struckmann & Company this morning, about eight "o'clock, and told him that, in accordance with your promise to let "him have the first available cutter, he could have the Polillo if he "so desired. He stated that he would like to have until noon in "order to confer with certain other parties before giving a definite "answer to the charter. I told him that we must know not later "than noon, as we had a charter in sight with the Manila Railroad "Company if he did not desire her. Not having heard from him at "noon, I again called him up and he then informed me that he had "not been able to hear from the parties interested and would like "until four o'clock to give a definite answer. I then told him that "if we did not hear from him by four o'clock that the boat would "be given orders to sail under charter to the Manila Railroad Com- "pany. At four o'clock I again called him up and he again in- "formed me he 'had not been able to get orders from the under- "writers', and, if we had a charter with the Manila Railroad Com- "pany, he did not desire us to hold the boat any longer for him. "I informed you of this by telephone, whereupon, as Mr. Struck- "mann again refused the boat to you personally, orders were given "for the Polillo to sail under charter to the Manila Railroad Com- "pany. (Sgd.) A. S. Thompson, Chief Clerk."

"Office of the Gonernor General, of the Philippine Islands, Man- "ila. June 12, 1913. Sir:—I am enclosing herewith for your in-

"formation a copy of an Executive Order, issued today by His
47 "Excellency the Governor-General, appointing you a mem-

"ber of a committee to investigate the progress of salving "from the wreck of the S. S. Nippon. Very respectfully, (Sgd.) "E. C. Bacon, Private Secretary to the Governor-General. Frank P. "Helm, Esq., Director of Navigation, Manila."

"The Government of the Philippine Islands, Executive Bureau, "Manila. June 12, 1913. Executive Order No. 39. Frank P. Helm, "Director of Navigation; Kirby S. Heck, Assistant Director of Navi- "gation and Chief of the Division of Port Works; P. E. Foster of "the Atlantic, Gulf & Pacific Company; F. W. Richardson, Sur-

" veyor of Hulls, Bureau of Customs; and John T. Breckwold are " hereby appointed a committee to investigate the progress of salving " from the wreck of the S.S. Nippon on Scarborough Reef. This " committee shall report to the undersigned at the earliest date pos- " sible. (Sgd.) W. Cameron Forbes, Governor-General."

" Manila, June 17, 1913. Sir:—In accordance with Executive " Order, appointing the undersigned a Committee to report upon the " progress of the work of salving the S. S. Nippon, we have the honor " to make the following report:

" First. Captain Breckwold, junior member of your Committee, " did not see fit to join the Committee on the trip to the scene of the " wreck, but elected to charter a separate steamer and go out with " representatives of Behn, Meyer; Struckmann & Company, and Mr.

" Hessel—a so-called wrecking expert—formerly a chief offi-

48 " cer in the Bureau of Navigation."

" Secondly. Your Committee arrived at the scene of the " wreck at noon of the 16th instant, and immediately inspected the " said vessel. The weather was fine and the sea smooth when we " boarded her and found work going on as follows:

" Two 30 h. p. boilers were connected up with a 6" steam pump " in the engine room and the polluted water was being pumped out " in an endeavor to change the water sufficiently so that divers could " work in the engine room. It appears that there is a hole some- " where between No. 3 hold and the engine room, which allows the " water to leak through the decaying copra into the engine room, " thus making it impossible for divers to work there. It is at this place " that a diver lost his life a few days ago, and several other divers " have nearly lost theirs. There was a second gang forward in No. " 2 hold mixing cement and cementing the bilges alongside of the " marging plate where the tank top is pulled away from the ship's " side. This has been wedged up and cement is being spouted in on " top. We were informed that this hold has been pumped down to " 3" from the tank top, showing that these leaks are under control. " Divers were working beneath the ship, under Nos. 3 and 4 holds, " plugging up rivet holes and making examination of the bottom en- " deavoring to ascertain where the water is entering No. 3 hold. As " the ship is very flat at this point and as the reef is practically level, " it was found impossible to make a thorough examination of the

" bottom from the outside.

49 " A new 8" sand pump, driven by a compound engine, is " installed in the hatch opening on a level with the lower " tween decks of No. 3 hold, in order that the copra in this hold, " amounting to several hundred tons, may be pumped out, as it is so " decomposed as to be practically worthless, and would not pay the " cost of handling and shipping to Manila.

" The salvors have two upright boilers and one horizontal boiler " connected with this 8" pump with a 2" steam pipe, and had just " started work satisfactorily when the crown sheet of the horizontal " boiler caved in, thereby reducing the power so that they were unable " to work the pump. Evidently this accident to the horizontal boiler " was due to the furnace having a flat surface and to the use of salt

" water. It was a most unusual accident, as the boiler is a new one " and had been in use only a few days.

" It appears, as the vessel lies now, that as soon as the copra is " pumped out of No. 3 hold and the leak stopped there and the water " changed so that divers may work in the engine room and stop the " holes that are known to exist in the vicinity of the dynamo under " the floor plates, it will be a very easy matter for the water to be " pumped out and the vessel floated.

" There are on hand at the present time two 6" pumps, driven by " gasoline engines—a 12 and one a 15 h. p.—two 8" pumps, one " driven by steam and the other by a 25 h. p. gasoline engine; one 7" " steam pump and one 6" steam pump.

" As soon as the 8" steam pump in No. 3 hold removes the copra " so that the leak can be gotten at in that hold, there is no
50 " doubt that the water can be held down so that fires can be " lighted in the donkey boiler and steam gotten to the 12" " ballast pump and the 13" circulating pump in the engine room " which, with the pumps already installed, will be sufficient to keep " the vessel afloat.

" An examination was made of the interior of the vessel and she " seems to be in excellent condition, with the exception of Nos. 2 " and 3 holds and the engine room. No. 2 hold is practically water- " tight now and work is progressing, we believe, satisfactorily in the " other hold and engine room.

" The gear on hand seems to be plentiful and sufficient for the " purpose, though the salvors need an additional boiler which, we " understand is to be sent to them immediately.

" They have sufficient labor aboard; in fact, a surplus of labor—a " number of men could be dispensed with.

" We see no reason why the work should be interfered with at " this time, as it seems to be progressing satisfactorily and all is being " done that could be done under the circumstances.

" Regarding salvage, in the majority of cases the following consti- " tute the ingredients of a salvage service:

"(1) The time and labor expended by the salvors in rendering the " salvage service;

" (2) The promptitude, skill and energy displayed in rendering " the service;

" (3) The value of the property employed by the salvors in ren- " dering the service, and the danger to which it was exposed;
51 " (4) The risk incurred by the salvors;
" (5) The value of the property saved; and

" (6) The degree of danger from which the property was rescued. " Answering the above in rotation:—

" (1) The present salvage party has been on board since May " 15th and have had from 70 to 200 men working at all times; from " the log, it seems that they have been working day and night when " it could be done to advantage.

" (2) It appears that the salvors did not go aboard until the " Agents of the vessel had refused assistance offered by a steamship

"company in Manila. They have shown skill and energy in ren-
"dering the salvage service.

"(3) Roughly, the value of the property employed by the salvors
"has been about P60,000 worth of equipment, and from two to four
"vessels and a large scow under charter. There is danger at all times,
"as the vessel is on the high seas and a typhoon is liable at any time
"to cause heavy loss to the equipment.

"(4) Owing to the peculiar nature of the cargo, in addition to
"the dangers from the elements to which the salvors have been ex-
"posed—the cargo consisting largely of copra, which has decom-
"posed and released poisonous gases, resulting in many of the men
"having to be replaced by new men, owing to sickness; the death of
"one man, and infection with the danger of blood poisoning by many
"others—the salvors are at all times under a great risk of losing all.
"A dozen or more men have been rescued from the holds of the
"vessel in a more or less unconscious condition overcome by the
"deadly fumes. At other times their feet have become so swollen
"that they could not stand upon them, and they have become
52 "blind owing to the poison affecting their eyes so as to en-
"tirely destroy their vision temporarily.

"(5) We do not know the value of the property saved, but some-
"thing in the neighborhood of from 30% to 40% of the copra was
"salved in good condition. It is the opinion of your Committee that
"if the present salvors had not been prompt in getting to the scene of
"the wreck and rendering this service and that if they had waited
"for the Agents to do the same work, this amount would have been
"considerably reduced, owing to the dilatory methods employed by
"the Agents. There is no doubt but what the ship was abandoned
"and even if, as stated by the commander of the vessel, he intended
"negotiating with some salvage concern looking toward the saving
"of the vessel itself, it is extremely doubtful whether they would have
"made arrangements and arrived on the scene of the wreck before
"the entire lot of copra was in such condition as to make its salving
"useless. In addition to the copra salved there was a large amount
"of general cargo, which had been stowed in the tween decks and
"which was brought to Manila in an undamaged condition.

"(6) Had a typhoon occurred between the time that the ship was
"stranded and the time a wrecking concern, such as the Captain of
"the vessel spoke of, arrived on the scene, the entire cargo might
"have been lost.
53 "It is the belief of your Committee that the underwriters
"should be grateful to the salvors for their assistance, as all
"of the property salved has been removed from the zone of danger,
"and the prospects are very encouraging for the saving of the ship,
"providing the weather holds good for two or three weeks longer.

"In conclusion, your Committee wishes to state that we believe
"that the work is progressing satisfactorily and that the salvors,
"while not extravagant, are sparing no expense in furnishing all the
"supplies and equipment necessary for the successful completion of
"the work. The vessel is very large, being 380 feet long and about
"50 feet beam, and the work that has been done on her in the last

" four weeks should receive the approbation of all concerned. The " work in patching the hull, so as to float her, seems to have been " along systematic lines and on well laid plans.

" As stated above, with the exception of more boiler power being " required, owing to the failure of one of the boilers, your Commit- " tee has no further suggestions to make as to any improvements that " may be made on the present methods used by the salvors. All of " which is respectfully submitted. Very respectfully, (Sgd.) Frank " P. Helm, Chairman; (Sgd.) K. S. Heck, Member; (Sgd.) F. E. " Foster, Member; (Sgd.) Fred W. Richardson, Member. His Ex- " cellency, The Governor-General, Manila, P. I.

"Manila, June 20, 1913. Hennings, Rizal, Guinayangan. Pro- " ceed Scarborough Reef immediately. Acknowledge. (Sgd.) " Helm."

54 " Guinayangan, June 30, 1913. Helm, Manila. Am pro- " ceeding at once. (Sgd.) Hennings."

" Olongapo, July 2, 1913. Helm, Manila. Nippon safe in port, " all well. (Sgd.) Hennings."

" I certify that the above are true copies. (Sgd.) E. A. Schrameck, " Acting Chief Clerk."

Thereafter plaintiffs read in evidence the deposition of Mr. SIMON ERLANGER, one of the members of the plaintiff firm, theretofore taken under oath upon notice to defendant. Said deposition was received without objection and is as follows:

(Title of Court and Cause.)

" Be it remembered that pursuant to the notice and affidavit hereunto annexed and on the 15th day of September, 1913, at the office of Southworth, Hargis & Springer, No. 50 Escolta, Manila, P. I., before me, J. H. Jordain, a Notary Public in and for the City of Manila, duly appointed and commissioned to administer oaths, personally appeared Mr. Simon Erlanger, one of the plaintiffs in the above entitled action now pending in said Court, as a witness for the defendants, who, being by me first duly sworn, was then and there examined and interrogated by Mr. W. L. Wright, of counsel for said defendants, and by Mr. Charles C. Cohn, of counsel for said plaintiff, and testified as follows:

Direct examination by Mr. W. L. Wright:

Q. State your name.
A. Simon Erlanger.
Q. Age.
A. Forty-five (45) years.
55 Q. Residence?
A. No. 848 Santol, Manila, P. I.
Q. Occupation?
A. Merchant.
Q. Where is your place of business?

A. No. 157 Escolta, Manila, P. I.
Q. What line of merchandise do you deal in?
A. General importing.
Q. Are you the owner of any ocean vessels?
A. Yes, sir; part owner.
Q. What ones?
A. The "Forrester" and the "Luzon."
Q. These in trans-pacific traffic?
A. They have been in trans-pacific traffic.
Q. How long have you been engaged with these vessels in that traffic?
A. A matter of some twelve (12) or fourteen (14) years I believe.
Q. Are you a seaman yourself in any respect?
A. No, sir.
Q. Never navigated a vessel nor mastered one?
A. No, sir.
Q. Have you any interest in the vessels that are alleged to have assisted in salving the "Nippon"?
A. None except as charterer.
Q. When did you charter these vessels?
A. The first one began the 14th day of May, 1913, thereafter as necessary or required.
Q. Did you make use of any of your own vessels, or those you are interested in?
56 A. No, sir.
Q. You chartered the "Mindoro" I believe, on the 14th day of May?
A. Yes, sir.
Q. And proceeded at once to the wreck "Nippon"?
A. I did.
Q. Were you on board the vessel?
A. I was not.
Q. Who was master of the "Mindoro" at that time?
A. Captain Anderson.
Q. What kind of crew was upon the vessel?
A. The regular crew in addition to people of our own.
Q. What people of your own were placed upon the "Mindoro" when it went out to the stranded "Nippon"?
A. On our charter you mean?
Q. Yes, sir.
A. Mr. Ben Taylor and some natives.
Q. How many natives?
A. About seven.
Q. Who was given authority or directions to manage the matter?
A. Mr. Ben Taylor.
Q. Did you give orders to him in writing?
A. Some orders were given to him later in writing, but verbal orders were given to him at the time of departure.
Q. Were you the owner at the time of any salving apparatus?
A. I was not.

Q. What, if any, salving apparatus was put on board the
57 "Mindoro" on this first trip to the steamer "Nippon"?

A. None.

Q. What was the object of that voyage?

A. To discover if the abandoned wreck was above water or not and to take possession of her for the purpose of salving her.

Q. Did you order Mr. Ben Taylor to go on board of her and take possession of her in your name?

A. Yes, sir.

Q. To hoist the American flag?

A. To hoist the American flag at the fore-peak, yes, sir.

Q. That was done by your order?

A. By our orders, yes, sir.

Q. When did you first send any pumps or salving apparatus to the wrecked steamer?

A. On the steamer "Vizcaya."

Q. When?

A. That was the next day or the day following. It was between those two days.

Q. How did you come to be notified that the "Nippon" was on the reef?

A. The same way you and the whole world were notified—through the daily press.

Q. Did you have any other notification—official notification?

A. No, sir.

Q. Have you ever been engaged in wrecking or salving vessels before this time?

A. No, sir, never before this time.

58 Q. Did you have any associates other than your own firm in this undertaking?

A. No, sir.

Q. Any agreement to share the profits of salvage?

A. No, sir.

Q. When you chartered the vessel "Mindoro" and the other vessels that you had, did you charter them under an agreement that they should be used for salvage?

A. Yes, sir.

Q. And for any other purposes that you might employ them in?

A. In connecting with that salvage?

Q. When you chartered those vessels which you made use of in salving the "Nippon," did you charter them with their crews or did you put on new crews?

A. I chartered them with their crews complete.

Q. The persons whom you employed outside of your charter were laboring men almost exclusively?

A. Somewhat.

Q. Would you say "almost exclusively"?

A. No, sir. We hired all classes of men to attend to the salvage work.

Q. Did you employ any person or persons who were experienced in salving vessels at sea?

A. I believe so.

Q. Who were they that were experienced?

A. Mr. Ben Taylor, Mr. Rutledge, Mr. Flor, Mr. Handysides, Captain Anderson, and there were others, but I have not a list of the employees here.

Q. You mean to say that they were the experienced ones?

59 A. These men were experienced. There were others I believe if I can recall them—Mr. Heber, Mr. Hilgrove, Mr. Helvering——

Q. What salvage apparatus did you have other than pumps that you employed in salving the "Nippon"?

A. All that was necessary to salve a vessel, but I cannot give you detailed information now. It is all of record.

Q. I notice that you have alleged in the complaint that you carried with you timbers and canvas. What kind of timbers did you carry?

A. Necessary timbers for that class of work.

Q. Can you give details of dimensions?

A. I cannot.

Q. Or canvas?

A. I cannot give you at the present moment. It is all of record and easily found.

Q. The obtaining of this salvage apparatus was left to your manager, Mr. Taylor, was it?

A. It was not, it was left to Mr. Reis.

Q. In employing the laborers whom you employed, besides those who were experts, did you make any special contracts on account of this being salvage work?

A. I gave them good pay.

Q. Didn't you give them just about the same pay that obtains in the Philippine Islands for labor?

A. They received pay commensurate with the risk they took.

Q. With the peril?

A. Risks and peril.

Q. How many barges or lighters did you take out to the steamer for this purpose?

60 A. To the reef one barge.

Q. How soon were they taken out after you took possession of the steamer?

A. Within a day or two.

Q. Did any of your vessels, steam vessels, lie alongside the "Nippon"?

A. They did at times.

Q. When did you visit the scene of the stranded "Nippon"?

A. About six days after the first trip of the "Mindoro".

Q. Did you go on board the "Nippon"?

A. I did.

Q. Did you ever give any orders yourself or directions about the work of salving the vessel?

A. At that time none.

Q. When you sent the "Mindoro" on the first trip under Captain Taylor——

A. (Interrupting.) The "Mindoro" was not under Captain Taylor.
Q. Who was in charge?
A. Under her master.
Q. Who was the master of the "Mindoro"?
A. Captain Anderson was.
Q. On the first trip?
A. On the first trip.
Q. Was Mr. Taylor on the "Mindoro" the first trip?
A. He was.
Q. Did you make him the superior in giving orders about the salvage, over the master of the "Mindoro"?
A. I did not. The master of the "Mindoro" had nothin- to do with it.
Q. Well you made use of the "Mindoro" later, did you?
61 A. I did.
Q. Under whose direction was the "Mindoro" and the other vessels as to giving and taking orders?
A. They were under the orders of Mr. Reis.
Q. Were the orders to Mr. Reis from you in writing?
A. No sir.
Q. At no time?
A. None that I know of.
Q. Did these vessels which you chartered—do I understand you to—in explanation of that last, did any of these vessels receive orders——
A. (Interrupting.) There was no writing, do you mean that?
Q. Yes, I mean that when you started them to the wrecked "Nippon" did you give any of the masters of the vessels orders as to what they should do?
A. They may have received such.
Q. Direct from you?
A. It would be from Mr. Reese or at his order.
Q. Was there nothing said about them avoiding danger by laying off at a distance?
A. The master of the vessel is the best judge of what danger was out there.
Q. Is it not a fact, Mr. Erlanger, that you gave orders to the masters of the vessels, either directly or through your representatives, that they should not lie close to the wrecked "Nippon" or take any hazzard in the operation?
A. None that I know of.
Q. Did your vessels encounter any real danger or bad weather in salving the "Nippon"?
62 A. There was always more or less bad weather.
Q. There was nothing of an exceptional character?
A. Nothing more than a heavy swell, I believe.
Q. Were you not solicited by parties outside of your firm to engage in this enterprise of salving the "Nippon"?
A. I was not.
Q. Then the whole operation was voluntary on your part and an enterprise of your own?

A. Most decidedly.
Q. What had the Bureau of Navigation to do with it?
A. We hired the assistance of the Bureau of Navigation.
Q. Was Mr. Helm in any way connected with the enterprise?
A. He was at the direction of the Governor General.
Q. About how many laborers were engaged in this work?
A. All together?
Q. On any one date?
A. It is a difficult question for me to answer without the records, but I imagine in the neighborhood of one hundred or more.
Q. And on any one day how many barges or lighters were——
A. There was but one barge.
Q. Did you see or communicate with the master of the "Nippon" before you took possession of the vessel on the reef?
A. Which master do you mean?
Q. Eggert.
A. I did not.
Q. You had knowledge of where he was at the time—where he could be found?
A. The report was that he was on the "Manchuria" bound for Hongkong, bound for some place, other than upon his own vessel the "Nippon".
63 Q. The "Nippon" had been visited by parties from the Bureau of Navigation before you went out there?
A. I have since heard so.
Q. Also by the "Manchuria" who touched at the point and had taken off the master?
A. That I do not know.
Q. And members of the crew and an officer from the vessel had come from the wreck to the Island of Luzon requesting assistance?
A. Requesting assistance for what purpose?
Q. The purpose may have been various and several, for the purpose of requesting assistance—and that was with your knowledge?
A. I understood that one of the officers of the "Nippon" and some of the members of the crew arrived on the Island of Luzon requesting assistance to save life from an abandoned wreck.
Q. Who gave you that information?
A. The newspapers.
Q. You had no other knowledge?
A. I have seen a copy of the statement of the crew that they abandoned the ship—those that came ashore.
Q. Those that came ashore on the Island of Luzon?
A. Yes sir.
Q. Where did you see that statement?
A. I think I have a copy of it, I don't know its origin.
Q. To whom was it given?
A. It is in our records ready for submission at the proper time.
Q. Was it given to the Bureau of Navigation?
64 A. It may have been.
Q. Did they not come to you requesting your assistance?
A. It was given to Mr. Reis, a copy of it.

Q. I suppose that information come through the Bureau of Navigation?

A. It may have come through them.

Q. Had Mr. Reese been in your employ before that time, Mr. Erlanger?

A. Yes sir.

Q. In what capacity was he employed by you before the 14th day of May, 1913?

A. Manager of shipping department.

Q. Had any of these other men whom you have named, Ben Taylor, Rutledge, Flor, Handysides, Heber, and two or three others, had they been in your services before this occasion?

A. No sir.

No further questions.

Cross-examination by Mr. Cohn:

Q. Who was the Mr. Reis that you referred to in your direct examination?

A. Mr. Julius Reis.

Q. Is he in your employ?

A. He is.

Q. In what capacity?

A. Manager shipping department.

Q. How long has he been manager of your shipping department?

A. Not quite two years.

Q. You have stated in your direct examination that Mr. Helm was connected with the salvage work by direction of the Governor General, please explain your answer. What was his connection and what was the direction of the Governor General?

65

A. At the time of beginning this operation and prior to the charter of the steamer "Mindoro" the first time, I caused a telegram to be sent to the Governor General requesting the assistance of the Bureau of Navigation. In response to this telegram the Director of the Bureau of Navigation received orders to assist us in every way possible.

Q. Is that the only connection of Mr. Helm with the salvage of the "Nippon"?

A. The only.

Mr. Cohn: I wish to make Mr. Erlanger my own witness now.

Mr. Wright: I have no objection.

Direct examination by Mr. Cohn:

Q. Mr. Erlanger, in the performance of this salvage service did you have any dealings or communications or relations with any person or persons claiming to be the owners of the vessel or of her cargo?

A. Communications do you mean?

Q. Communications, relations, or any dealings whatever.

A. There have been some.

Q. With whom?

A. The first interviews—if these are included—was one held at General Bell's house before the Acting Governor General. Thereafter there was a meeting at your office between the alleged underwriters, the captain, and a representative of the underwriters,
66 Captain Breckwold. Following that there was a meeting at the office of Bruce, Lawrence, Ross & Block between the parties at this time concerned in the matter.

Q. What was the date of the conference you speak of held before the Acting Governor General?

A. About the neighborhood of the 21st of May.

Q. Were you present on that occasion?

A. I was.

Q. Was Captain Eggert present?

A. He was.

Q. Who else was present?

A. Mr. Strebel, Mr. Lang, Mr. Kerr, Mr. Underwood, the Vice Governor, Mr. Rohde, Captain Eggert, Mr. Cohn, Mr. McCoy and myself.

Q. Who is the Mr. Strebel to whom you have referred?

A. Mr. Strebel of Struckman & Company.

Q. Who is the Mr. Rohde you have referred to?

A. The Mr. Rohde who is attorney for one of the defendants in this case. He is counsel for Mr. Strebel.

Q. Did you hear all that transpired at that conference?

A. Yes sir.

Q. Did you hear a statement then and there made by the late master of the "Nippon" Captain Eggert relative to a wireless message despatched ashore from the "Manchuria" after he had gone aboard that vessel?

A. Yes sir, I did.

Q. Will you state what that statement was?

A. The statement was that he knew the contents of the wireless message because he held a copy in his hand and read it over.
67 Q. Did he make the statement once or repeatedly?

A. Repeatedly sir.

Q. When was the conference held at the office of Hausserman, Cohn & Fisher, to which you have referred?

A. About twelve (12) or fifteen (15) days thereafter.

Q. Who was present at that time?

A. Mr. Strebel, Captain Eggert, Breckwold, a gentleman from Struckman & Company whose name I do not know, Mr. Cohn and myself.

Q. At whose instance was that conference held?

A. At the instance of Messrs. Struckman & Company.

Q. And what was the alleged purpose of that conference?

A. To arrange for the taking over the salvage of the steamer "Nippon".

Q. At that conference were any statements or representations made by Mr. Strebel, by Captain Breckwold, by Captain Eggert or by any of them relative to the person-el that they proposed to use in contin-

uing the salvage services commenced by you in the event it was taken over?

A. It was.

Q. What was such statement or statements?

A. They said——

Mr. Wright: Objected to as being immaterial and irrelevant.

A. Yes, sir. They proposed in the event of satisfactory arrangements being made to take over the salvage operations being made, to use our equipment and our men.

Q. How do you know they proposed that?

A. Because they asked it in answer to a question made
68 by me.

Q. Was that made a condition of the proposed taking over?

A. It was.

Q. What, if anything, was said relative to the system to be employed in lightering the vessel?

A. Nothing.

Mr. Wright: Objected to on the ground that it is immaterial, irelevant and conversation apparently growing out of some attempt to compromise the questions pending, and is therefore improper.

Q. What, if anything, was said by Mr. Strebel, Captain Breckwold, Captain Eggert or anyone relative to the means that they proposed to employ in taking out the cargo of the vessel in the event they took over the continuance of the salvage.

Mr. Wright: Objected to on the ground that it is immaterial, irrelevant and conversation apparently growing out of some attempt to compromise the questions pending, and is therefore improper.

A. Nothing further.

Q. Were these parties asked how they proposed to lighter the vessel?

Mr. Wright: Objected to on the ground that it is immaterial, irrelevant and conversation apparently growing out of some attempt to compromise the questions pending, and is therefore improper.

A. They were.

Q. What reply was made to the inquiry?

Mr. Wright: Objected to on the ground that it is immaterial, irrelevant and conversation apparently growing out of some
69 attempt to compromise the questions pending, and is therefore improper.

A. That they expected to use the men and equipment that we then had at work.

Q. Was anything said by these parties with regard to the rapidity with which they expected to work the cargo?

A. No sir.

Q. Refreshing your memory, do you remember the reply of Captain Breckwold to a question by you to the effect "that is my secret"?

Mr. Wright: Objected to as being irrelevant and immaterial and a conversation taking place at an attempted compromise.

A. I recollect that.

Q. To what question was that a reply?

A. As to what means other than those we were using that they could use to render the discharge of the vessel and the salvage of the ship more expeditious.

Q. Mr. Erlanger when was the conference held at the office of Bruce, Lawrence, Ross & Block?

A. About June 20th.

Q. Who was present at that conference?

A. Mr. Underwood, Captain Eggert, Mr. Strebel, Mr. Rohde, Mr. Reese, Mr. Cohn, Mr. Lawrence, Mr. DeWitt and myself.

Q. By whom was that conference called?

A. By Mr. Lawrence.

Q. Was the call for that conference oral or in writing?

A. I believe in writing.

Q. Were the proceedings of that conference reported?

A. They were.

70 Q. By whom?

A. By a stenographer of Bruce & Lawrence.

Q. I show you this document, marked "Exhibit A. Deposition of Mr. S. Erlanger," and ask you to state if you know what that is?

A. I do. It is a call for that meeting.

Mr. Wright: No objection to the introduction of this document.

Mr. Cohn: I offer this document in evidence and ask that it be marked "Exhibit A" to the Deposition of Mr. S. Erlanger.

Q. At this conference that was held in response to this call "Exhibit A", were any criticisms, suggestions, advices, or information or requests made or tendered by the master of the vessel, by Judge Rohde, or by Struckman and his representatives, or any of them?

A. No sir, none of them.

Mr. Wright: Which master do you mean?

Mr. Cohn: The late master, Mr. Eggert.

Mr. Wright: Objected to.

Q. Mr. Erlanger, throughout the performance of the salvage service and from the 14th day of May, 1913, to the completion of the services on or about the 2nd day of July, 1913, were any suggestions, assistance, or criticisms or help in any form offered or tendered to you by owners or underwriters of the cargo, through representatives or any of them?

A. No sir.

Q. What was their attitude?

71 A. One of extreme hostility and opposition.

Q. How was that opposition and hostility manifested?

A. By the giving of vic-ous interviews to the daily press, by endeavoring to withhold apparatus from us and by endeavoring to destroy our credit.

Q. Was there any interference or attempted interference with your enjoyment of the assistance of the Bureau of Navigation through the medium of those vessels and their equipment?

A. There was.

Q. What was that interference?

A. By requests made to the State Department at Washington, and by demand on the Acting Governor General that same be not accorded us.

Q. By whom was that interference attempted?

A. By Struckmann & Company and the owners of the vessel—that is to say, the representatives of the owners of the vessel—so I am informed.

Mr. Wright: I object to the question and move to strike the answer out on the ground that it is heresay.

Q. How was that attempted interference manifested?

A. By the receipt of notice through the Executive Bureau that such cablegrams had passed, and request for information by the State Department through the Executive Department here, and further any arrangements for the docking of the vessel at Olongapo such arrangements could only be made with the consent of the Navy Department in Washington, and that was given predicated upon any rights that might grow by reason of the protest of the Swedish Government.

Q. When did Struckman & Company first intervene in the
72 matter of the salvage of the "Nippon"?

A. On the morning of the 15th of May.

Q. In what capacity did they intervene?

A. As representatives of ship and cargo.

Q. What, if any, demonstrations did they make of their authority to represent the ship and cargo?

A. None whatever.

Q. When did you first learn that they had any authority to represent the "Nippon"?

A. At the office of the Collector of Customs some eight (8) or ten (10) days thereafter.

Q. When, if ever, did you first learn that they had authority to represent the cargo?

A. I have never received any real notice of their authority or exhibition thereof.

Q. Do you know at the present time what part of the cargo if any, they have authority to represent?

A. I have no s-ch notice, officially or unofficially, except their say so.

Q. Have other persons besides Messrs. Struckman & Company intervened in the salvage of the vessel and cargo?

A. They have.

Q. Who are they?

A. You mean in the salvage of the cargo and the operations?

Q. In any way.

A. Yes. Warner Barnes & Company, Stevenson & Company, Wise & Company, Smith Bell & Company, Ker & Company.

Q. Do you know what portions of the cargo each of these persons have or claims to have authority to represent?

A. By general name only. Not by quantities.

Mr. Cohn: That is all.

73 Cross-examination by Mr. Wright:

Q. You say certain parties intervened in the salvage of the "Nippon?

A. The merchandise landed as salvage of the "Nippon" these persons are all interested therein.

Q. What do you mean by "intervening" Mr. Erlanger?

A. Some by claiming salved cargo, some by writing letters to us stating that they were not satisfied with the method of handling the salvage.

Q. None of these parties in any way assisted you in salving the cargo or the vessel did they?

A. No sir, no one did.

Q. You speak of interference on the part of certain defendants. What defendants in this case interfered with your salvage operations?

A. Messrs. Struckman & Company.

Q. Any-body else?

A. None that I know of.

Q. When did that interference manifest itself?

A. Directly after our first work was done.

Q. Can you give the date about?

A. It can be found in the daily papers.

Q. The daily papers are not always very reliable.

A. They are the only ones we can take, and as these statements were not refuted by Messrs. Struckman & Company I was compelled to believe them.

Q. This interference you mention consisted simply of newspaper report did it?

A. To a large extent.

Q. Did you have any direct interference by Struckman &
74 Company?

A. Yes sir, by coming aboard the ship and objecting to everything that was done.

Q. They demanded possession too, did they not, and insisted upon their right to salve the cargo?

A. They demanded possession of the ship.

Q. For the purpose of salving the cargo?

A. Yes sir, so they said.

Q. And that was about the 16th of May?

A. About the 16th, the first time.

Q. Did you refuse to give them possession, or to al-ow them to assist?

A. I refused possession. They offered no assistance.

Q. You never refused to permit them to assist?

A. We never refused to allow them to assist in any way.

Q. Did you get notice of any other hostility or interference except through the newswpapers and what you have already mentioned?

A. Only hearsay on my part.

Q. You went right along with your operations?

A. Most decidedly.

Q. As if no newspapers were being published?

A. Most decidedly, although under great difficulties.

Q. These meetings that you have mentioned that took place at the house of Mr. Gilbert, also at the office of Bruce, Lawrence, Ross & Block, and of Haussermann, Cohn & Fisher, were all meetings made by appointment or request of some parties connected with the case?

A. Yes.

Q. And there were of-ers by you at that time to com-
75 promise or adjust the matter?

A. No sir.

Q. On no occasion?

A. No sir.

Q. What was the purpose of the meetings?

A. The purpose of the meeting at the Acting Governor General's house has already been stated in my former answers. The meeting at the office of Bruce, Lawrence, Ross & Block and also the meeting at the office of Mr. Cohn has also been explained.

Q. And there was no other reason except the ones given?

A. None other.

Q. Were there not some propositions or overtures made to you or Erlanger and Galinger looking to the release of the cargo or the vessel to the claimants so that they could salve it themselves?

A. None other than what I have already given in my answers.

Mr. Wright: No further questions.

Redirect examination by Mr. Cohn:

Q. Did or did not the opposition and interference by the owners and underwriters of the cargo and their legal representatives have any effect upon the facility with which the salvage operations were carried on?

A. They had a great deal of effect for the simple reason that had we followed out the plan we had-outlined to jettison all the cargo we would have probably been able to save the ship earlier than we did, but due to their insistent demands and attacks we did our best to get as much cargo as we could.

76 Q. What effect, if any, did the attitude referred to have upon the securing of labor and the effectiveness of the labor secured by you?

A. Extremely difficult. The nature of the cargo was poisonous, the men could work but a short time in it when they would be overcome with the gasses. This would make the balance of the men strike and render their services ineffective. These men returning to shore

would report the nature of the work and make it very difficult for us to secure proper and capable laborers.

Q. What effect, if any, did the newspaper articles have upon the procuring of labor?

A. The native papers——

Mr. Wright: I object to that as being immaterial. I do not think anybody can be held responsible for what the newspapers did.

A. (continuing) The news of the alleged illegality of our work spread by the native papers likewise had serious effect.

Recross-examination by Mr. Wright:

Q. How soon after you began operations of salvage of the vessel did this interference manifest itself?

A. Immediately.

Q. How soon after you began this work did you begin unloading the cargo?

A. Immediately.

Q. You mean by that on the 16th or 17th of May?

A. Immediately after the 17th of May.

Q. Were these reports circulated so soon as to interfere with laborers being employed?

A. The returning laborers spread news as well as the papers.

77 Q. The returning laborers were your own employees were they not?

A. Some of them—all of them.

Thereupon Mr. JULIUS REIS was produced as a witness on behalf of plaintiff, and being first duly sworn, testified in open court as follows:

Direct examination by Mr. Fisher:

Q. Please state your name, occupation, and residence.

A. J. S. Reis, Manager of the Shipping Department of Erlanger & Galinger, Manila, P. I.

Q. What are your duties, Mr. Reis, as manager of the shipping department of Erlanger & Galinger?

A. To attend to all the duties in connection with or devolving upon the shipping department, see to the landing and loading of passengers and freight and the arrival and departure of vessels, etc., and any other duties I am instructed to perform by one of the members of the firm.

Q. What particular class of business is conducted by the shipping department of Erlanger & Galinger?

A. The dispatching of vessels, the handling and forwarding of passengers and cargo; general shipping business.

78 Q. Are they agents for any steamship line?

A. Yes, sir, agents for Toyo Kisen Kaisha Steamship Company and The Oriental S. S. Co.

Q. How long have you been in charge of the shipping department of Erlanger & Galinger?

A. Since March 1, 1912.

Q. What was your occupation previous to that time?

A. Previous to that time for two years and three months Assistant Director of Navigation of the Philippine Islands.

Q. What were your duties, Mr. Reis, as Assistant Director of Navigation?

A. Well, for twenty months of the two years and three months I was Acting Director of the Bureau and my duties were the supervision of the construction of port works, the construction of a pair of vessels, the issue and supplying of property, the supervision and discipline of the entire force of the Bureau of Navigation, in fact all of the duties devolving upon the Director of that Bureau.

Q. Did you have anything to do personally with the salvage operations conducted by the plaintiff firm on the SS "Nipon?"

A. I gave all the instructions to the men in charge of the operations.

Q. State if you know when the firm of Erlanger & Galinger first became interested in the salvage of the SS "Nipon."

A. They first became interested on the afternoon of the 13th of May when one of the daily newspapers published a wireless message purporting to have been received from the Manchuria stating
79 that the Nipon was a wreck and had been abandoned on Scarborough reef.

Q. That was on the 13th day of May, 1913?

A. Yes, sir.

Q. Previous to reading this wireless message you have just referred to as having been published in the afternoon papers in Manila May 13, 1913, what information or knowledge did you have concerning the wreck or abandoning of the Nipon?

A. I think that there were also some other newspaper reports to the effect that the Nipon was badly aground on Scarborough reef sent in by the crew—some of the members of the crew—from Santa Cruz, Zambales, some of the crew had been taken ashore at Zambales.

Q. Other than these different reports appearing in the public press of Manila had you any means of knowledge in regard to the situation or condition of the Nipon?

A. No, sir, none.

Q. Upon becoming interested in the salvage of the Nipon what steps did you take and when?

A. On the afternoon of the 13th I tried to get a charter on the SS "Clark," the property of the Insular Lumber Co., I called up the Insular Lumber Co. on the telephone but she was not available at that time. Right after calling up the Insular Lumber Co. I called up the Director of Navigation and asked him if he could charter me a vessel and he told me that the only vessel he had available at the time was the SS "Mindoro," which had just been reported to the

office as having passed Corregidor and was not yet in port,
80 but that I could have it when it arrived.

Q. About what time was it when you telephoned to the Director of Navigation?

A. Early in the afternoon, between two and three o'clock in the afternoon I should say.

Q. And the Director informed you that you could have the Mindoro when she arrived in port?

A. He informed me as soon as he got word from the Governor that I could have her when she arrived in port, I, however, did not give him a firm answer the first time I called him up, at six o'clock that evening, probably between five and six o'clock that evening I called him up again and told him definitely that we would take the boat.

Q. Did you tell him what you proposed to do with her?

A. Yes, sir.

Q. Did you ask the Director of Navigation for any assistance in the matter of men or crew to work on the salvage of the Nipon?

A. When I first called him up in the afternoon I asked him if he could recommend to me some men to send out in charge of the boat until such time as we could get men and equipment out there to begin the actual work of salvage.

Q. Did the charter of the Mindoro by you also include the charter of her crew?

A. Yes, sir.

Q. Well, you did take over the Mindoro, did you?

A. Yes, sir.

81 Q. What did you do with her?

A. We sent out Mr. Taylor on the Mindoro with some men on the 14th with instructions to take charge of the Nippon in the name of Erlanger and Galinger, and on the 16th we sent out supplies and men to begin the work of salvage of the vessel and cargo.

Q. Did the Mindoro leave Mr. Taylor on the Nippon?

A. Yes, sir.

Q. Did any other men accompany him or were any others left there with him?

A. Four or five natives.

Q. By what means did you sent equipment and supplies out to Mr. Taylor and the men with him which you just mentioned having sent out on the 16th?

A. On the SS "Vizcaya."

Q. How did you get the Vizcaya?

A. Chartered her from Inchausti & Co.

Q. What gear or equipment did you send out to the Nipon by the Vizcaya, Mr. Reis?

A. Supplies and equipment for the salvage of the cargo and the vessel.

Q. I show you this list, which for the purposes of identification I asked by marked Exhibit "D", and ask you to state what it is?

A. This list shows all the equipment sent out to the Nippon and the dates on which it was sent.

Q. This list Exhibit "D" shows all the equipment sent out at vari-

ous times in the course of the salvage operations on the Nipon?
82 A. Yes, sir.

Mr. Fisher: I ask that this list Exhibit "D" be admitted in evidence in connection with the testimony of the witness.

No objection.

NOTE.—The document admitted in evidence as plaintiff's Exhibit "D" contains an itemized statement of the equipment and supplies, steam vessels and lighters employed by plaintiff in the salvage of the S. S. "Nippon" and her cargo. Said exhibit, by stipulation of counsel, is omitted from the record upon agreement that a synopsis if its content be inserted in place thereof, which synopsis is as follows:

Value of equipment and supplies used in salving S. S. "Nippon" and cargo	P 47,595.73
Value of the steam vessels used for the same purposes	220,000.00
Value of lighters used for that purpose	32,000.00
Total	P299,595.73

Q. Mr. Reis do the dates shown on that list (Exhibit "D") represent the dates when the various articles sent out to the Nippon arrived there or the dates when they were shipped from Manila?

A. They represent the dates when they left Manila.

Q. State, Mr. Reis, to whom the various articles of salvage equipment enumerated in this list belonged?

A. Some of it belonged to the Bureau of Navigation, some of it belonged to the Atlantic Gulf & Pacific Co., and some of it we purchased.

83 Q. Under what conditions or by what means did your firm obtain possession of that part of the property shown on this list which you state belonged to the Bureau of Navigation and the Atlantic Gulf & Pacific Co.?

A. We borrowed them under letters of guarantee that we would be responsible for them in case of any loss or damage in connection with them.

Mr. Rohde: I ask that the portion of the testimony of the witness referring to the contents of a written document be stricken out unless the documents are produced in evidence.

Mr. Fisher: They will be produced.

The Court: The objection is overruled; he merely stated how the articles of equipment were obtained from these parties.

Q. State whether or not any compensation was paid to the Bureau of Navigation and the Atlantic Gulf & Pacific Co. for the use of the articles of equipment borrowed from them as you have just stated?

A. Yes, sir.

Q. Please state the number of men that were employed on the salvage operations, Mr. Reis, from time to time in the course of the progress of the work?

A. This list (producing a document) shows the men employed on

the work each day from May 16th to July 4th, when the last lot of copra was removed from the Nippon.

Q. You refer to this list which I ask be marked Exhibit "E" for the purpose of identification?

A. Yes, sir.

The document was admitted in evidence as plaintiff's Exhibit "E" and is in words and figures as follows:

84 Number of Laborers Employed in Connection with the Salvage of S. S. Nippon, May 16, 1913, to July 4, 1913.

(Divers, fitters, machinists & firemen included.)

May, 1913.	No. of laborers.	June cont.	No. of laborers.
16	13	11	144
17	54	12	144
18	71	13	134
19	71	14	134
20	91	15	134
21	102	16	134
22	102	17	111
23	112	18	96
24	122	19	155
25	118	20	139
26	135	21	139
27	157	22	100
28	167	23	85
29	167	24	85
30	140	25	85
31	169	26	85
June.		27	74
1	169	28	74
2	176	29	74
3	176	30	74
4	176	July.	
5	176	1	74
6	151	2	74
7	151	3	74
8	173	4	74
9	173		
10	208	Total	1465

85 Q. What was the condition of the labor market at the time these operations for the salvage of the Nippon and her cargo were going on with respect to the availability thereof?

A. Well, at the time we first started out it was very, very hard to get labor at all.

Q. What was the reason?

A. At that time the Military were moving a great many supplies and men, they were transferring a number of men from the posts in the provinces to Manila and McKinley and they were also moving

a number of supplies and men from the posts adjacent to Manila over to Corregidor and they were using a large number of
86 laborers to do this and for that reason it was almost impossible to get any trained stevedoring men around Manila for the first few days.

Q. State what wages were paid to the men out there by you with respect to the normal wage rate for laborers of the same class on shore or in the Bay here in Manila?

A. The normal wage rate here in Manila and in the Bay was from P0.80 to P1.20 and we paid from P1.20 to P2.00.

Q. Did the wages which you paid the men employed by you include subsistence?

A. In most cases the shore wages do not include subsistence, but in rare cases and for gangs of trained men the subsistence is furnished.

Q. Did you include subsistence in the compensation of the men employed?

A. Yes, sir.

Q. When you say shore wages or wages on shore do you refer to the wages for ordinary work around the Bay here in Manila?

A. Yes, sir.

Q. That is the price ordinarily paid for the handling of the cargo of vessels here in the bay?

A. Yes, sir, for the loading and discharging of vessels here in port.

Q. What vessels other than the Mindoro were employed or made use of by your firm in the course of the salvage operations conducted in connection with the Nippon—other than the Mindoro and Viscaya?

A. I have a list here which shows that the Mindoro was
87 in our service May 4 to June 5, 1913; July 4 to 13, 1913, and from July 24 to 26, 1913; the Vizcaya was in our service May 16 to 27, 1913; the Mauban May 19 to 20, 1913; the Basilan May 29 to June 10, 1913; the Corregidor May 24 to June 15, 1913; June 30 to July 2, 1913, and July 7 to July 11, 1913; the Borongon May 31 to June 23, 1913; the Rizal June 20 to July 3, 1913; the Jolo July 9 and 10, 1913; the barges Seattle and Guillermo July 5 to July 9, 1913, and the Bureau of Navigation scow May 16 to July 3, 1913.

Q. Those vessels were all employed by you for the periods as just stated in the salvage of the Nip-on and her cargo?

A. Yes, sir.

Q. Can you state, Mr. Reis, from your knowledge, the tonnage and approximate value of the various vessels just named by you as employed by your firm?

A. The tonnage of the coast guard boats is 440 tons each and they are valued, according to the letter from the Director of Navigation at P80,000 each.

Q. What about the other vessels?

A. The Borongon is of about equal tonnage with the coast guard boats and is valued at about P120,000. The Mauban and Vizcaya

are of about 800 tons each—I will change that—the Mauban is about 1,200 tons and the Vizcaya about 800 tons and the value would be about P200,000 each.

Q. Were those vessels, labor, and equipment referred to by you in your testimony employed by your firm in the salvage of the Nippon or her cargo or both?

A. Yes, sir.

88 Q. Who had actual charge of the salvage of the Nippon and her cargo?

A. Mr. Taylor, Captain Taylor, and in his absence Captain Anderson; Captain Taylor was the first one in charge.

Q. What other Americans or Europeans were employed by your firm in connection with the salvage work, employed entirely for your firm?

A. Captain Hilgrove, Mr. Helvering, Mr. Rutledge, Mr. Taylor, Mr. Flor, Mr. Handerside, Mr. Johnson, and Mr. Brown.

Q. Who gave the instructions on behalf of Erlanger & Galinger to the persons in charge of those salvage operations?

A. I did.

Q. Please state, if your know, Mr. Reis, what means in general were used in the salvage of the cargo of the Nippon, the means and the methods?

A. The general cargo of the vessel was first taken out and brought to Manila and instructions given to the men to break out the copra and sack it and bring it to Manila.

Q. Was all the copra that was on the boat in the same condition?

A. No, sir; the copra may be stated to have been in three separate conditions, that is there were three lots each in a different condition; the first lot the dry copra, the second lot the copra which was partly submerged by the rising of the tide, and the third lot that which was always submerged.

Q. Did you see the vessel yourself?

A. After she was in Olongapo; I did not see her while on the reef.

89 Q. What disposition was made of the copra which was salved from the Nippon?

A. All of the cargo brought into Manila from the Nippon was turned over to the Insular Collector of Customs.

Q. Do you know what disposition he made of it?

A. It was sold.

Q. How was it brought into Manila?

A. On the vessels under charter to us, to Erlanger & Galinger.

Q. Was it brought into Manila in the holds of those vessels or towed in by them?

A. It was brought in in the holds of the vessels.

Q. It was brought in the holds of the vessels?

A. It was all brought in the holds of the vessels I think with the exception of one lot which was brought in from Olongapo which was towed in on scows.

Q. In respect to the statement of the cargo sold you referred to the Copra did you not?

A. Yes, sir.

Q. And was the same thing true of the general cargo brought in from the Nippon?

A. Yes, sir.

Q. Who had charge of the expenditures by Erlanger & Galinger in connection with the salvage operations?

A. All of the vouchers were approved by me before paid.

Q. Have you a record of the expenditures incurred by Messrs. Erlanger & Galinger in connection with these salvage operations?

A. Yes, sir.

Q. I show you this document, which for the purpose of
90 identification I ask be marked Exhibit "F," and ask you to state what it is?

A. It is a statement showing the expenditures made by Erlanger & Galinger in connection with this work, under the different subheads, and this other sheet is a recapitulation of all the expenditures.

Q. The recapitulation which you mention is this other document, which I ask be marked Exhibit "G", is it not?

A. Yes, sir.

Q. Are you able to state of your own knowledge whether or not the various items contained in these two documents Exhibits "F" and "G" are correct?

A. They are correct.

Q. They represent the actual outlay by the plaintiff in connection with the salvage of the Nippon and her cargo?

A. Yes, sir.

Mr. Fisher: I offer in evidence the document Exhibits "F" and "G" in connection with the testimony of the witness.

No objection.

NOTE: Plaintiffs' Exhibits "F" and "G" contain an itemized statement of the expenditures incurred by plaintiffs in floating the Nippon and bringing her and her cargo to the port of Manila. It is omitted by consent of counsel, and upon the stipulation that it is shown by said document that the total cash outlay incurred by plaintiffs for the said purpose was the sum of One Hundred Twenty-two Thousand Nine Hundred Twenty-two and 12/100 (P122,922.12) Pesos, Philippines Currency, composed of the following
91 principal items:

Wages of laborers (including engineers, and drivers) ...	P35,075.90
Subsistence of laborers	4,080.19
Expendible supplies	9,739.14
Equipment and material.....	6,686.95
Insurance on equipment.....	4,872.61
Arrastre charges	67.71
Hire of steamers and lighters and dock charges.....	52,002.54
Sacks and twine for sacking copra taken from Nippon..	3,366.70
Sundries (including water, drugs, lumber, explosives, etc.)	7,030.38
Total	P122,922.12

This total represents the net expenditure, after deduction of credits amounting to P6,366.64, representing receipts from sale of used material and equipment.

It is further stipulated that not less than forty per cent. of this expenditure was incurred in removing the copra cargo from the Nippon and bringing it to Manila.

Q. Have vouchers been preserved, Mr. Reis, supporting the various items expended by the plaintiff as shown by the documents Exhibits "F" and "G"?

A. They are in these two files here (indicating documents in possession of attorneys for plaintiff).

Q. Mr. Reis, was the equipment used in connection with the salvage of the Nippon and her cargo expendable or non-expendable?

92 A. Some of it was expendable and some non-expendable.

Q. What disposition was made of that part of the equipment which was non-expendable?

A. It was sold to the Government of the Philippine Islands, that portion of it which we had purchased, upon the approval of the Governor-General and the money received for it is taken into consideration in the recapitulation of the expenditures, it is shown under sale of equipment.

Q. You refer to the document Exhibit "G"?

A. Yes, sir.

Q. Have Messrs. Erlanger & Galinger received any compensation for the salvage of the Nippon and her cargo?

A. We received £15,000 sterling from the owners of the ship.

Q. For what was that payment made?

A. For the salvage of the ship.

Q. You mean pounds Sterling, English currency?

A. Yes, sir.

Q. From whom was this salvage compensation received?

A. From the owners or underwriters of the ship.

Q. State, if you know, Mr. Reis, what difficulties, if any, were encountered by your firm in the course of the salvage operations on the Nippon?

A. We encountered a great many difficulties, probably the main difficulty was in getting laborers, we had great difficulty during the first few days in getting any laborers at all on account of the movements of the army, which took almost all the available supply of laborers of this class there were around Manila, and then after we did get men out there they would go down and work an hour or an hour and a half, some of them two hours at the most and

93 then they would come up and complain that their eyes hurt and their skin itched and they had spots on their legs and body and they wouldn't go back down in the holds to work and wanted to come right back to Manila. I saw some of them when they came back to Manila and their eyes were swollen and they had black spots on their bodies. They could only stand it to work there for an hour or so and naturally when they got in here they noised

it around town that when they worked out there they became sick and that made it all the more difficult for us to secure laborers.

Q. What methods did you employ to obtain laborers?

A. Through stevedor-s here in Manila and we sent men out ourselves to hunt for laborers.

Q. I notice that the statement as to the number of men employed on this work by your firm shows between seven and eight hundred, what, if you recollect, was the maximum number of men employed by you on that work at any one time?

A. Two hundred and eight I think, I am not sure of the exact number, but it was over two hundred anyhow.

Q. Can you state approximately how frequently you had to change the gangs of men working out there on account of the difficulties encountered in the work?

A. Every ship that went out there to the Nippon took a gang of men out and ever- ship that came in from there brought a gang of men in, we would send a gang of thirty or forty men out on every ship and then on the return trip we would get back about the same number, a whole lot of them would only stay for one trip and
94 come back on the same boat that took them out.

Q. Mr. Reise can you state approximately the number of individuals that were employed on that work from time to time as the work progressed?

A. In all about one thousand, very close to a thousand.

Q. Did you personally see the men who came off that work upon their return to Manila?

A. I paid them off myself.

Q. Please state whether or not the wages demanded by the laborers for working on the Nippon increased in the course of the progress of the operations?

A. Yes, the first lot of men we sent out there we only paid P0.80 a day and the second lot P1.20 and then by that time the first lot we had sent out there had returned to Manila and noised it around town that it was a bad place to work, that anyone that worked out there got sick, that they got the headache and their eyes got sore and they got sores all over their bodies, and naturally when this got around among the laborers here we found it a whole lot more difficult to find anyone to go out there to work at all, we paid one lot I think P1.50 and then after that we had to pay them all P2.00 and this also included subsistence.

Q. About how far is Scarborough Reef from Manila?

A. From Manila it is about 120 nautical miles, about twenty-four steaming hours with the vessels we had.

Q. Is there any other place nearer than Manila which could have been used as a base from which to conduct these salvage operations and secure men and supplies?

A. No, sir, there isn't any other place at all, anywhere near.

95 Q. This reef, Scarborough Reef, is out at sea outside of the waters of the Philippines?

A. Yes, sir, it is out of the course of all transportation out in the

open sea, about one hundred and thirty-five nautical miles off the coast of Luzon.

Q. About how long does it take a steamer to go out there from Manila, average steaming time?

A. Twenty-two to twenty-four hours.

Q. Were there any steps taken with a view to safeguarding the lives of the men who were employed on the Nippon while removing her cargo and patching her up with a view to floating her?

A. We always had a steamer standing by to take off the men in case of a storm or in case of any accident.

Q. State whether or not that increased the cost of the salvage operations?

A. Naturally, we had to employ more boats in order to be able to keep one standing by all the time.

Q. During the progress of these operations, Mr. Reis, state whether or not you received any co-operation or assistance from the owners of the vessel or the owners of the cargo thereof?

A. None whatsoever.

Q. Was there any conference held between the persons representing or pretending to represent the owners of the vessel and the owners of the cargo and the salvors?

A. Yes, several conferences.

Q. Were you present at any such conference?

93 A. I was present at one conference held in the office of Bruce, Lawrence, Ross & Block.

Q. Was there any record made of the conference held in that office on that occasion?

A. Yes, sir.

Q. Do you know whether or not the conference you have just referred to was held upon written or verbal notice?

A. We received a letter in regard to this conference from Mr. Lawrence I think.

Q. I invite your attention to this letter, which I ask be marked Exhibit "H" for identification and ask you to state if that letter calls for the conference to which you have just referred?

A. Yes, sir, that is the letter.

Q. I also invite your attention to this document, which I ask be marked Exhibit "I" for identification, and ask you to state what that is, if you know.

A. This is a copy of the proceedings taken down at that conference?

Q. Have you read that, Exhibit "I"?

A. Yes, sir.

Q. State whether or not that correctly states the proceedings which took place at that time?

A. Yes, sir.

Mr. Fisher: I ask that the documents Exhibits "H" and "I" be admitted in evidence in connection with the testimony of the witness. No objection.

97 The letter identified as plaintiff's Exhibit "H" is as follows:

"Manila, June 11, 1913. Messrs. Haussermann, Cohn & "Fisher, Manila. Dear Sirs: Confirming the conversation of this "morning of our Mr. Lawrence with your Mr. Cohn, we request that "you, with your principals in the matter of the S. S. Nippon, meet "us and our principals as early as possible for the purpose of in- "forming the interested parties of the present condition of the Nip- "pon, your plans for salving the vessel, and the method you are em- "ploying and intend to employ. We represent in this matter the "owners of the vessel and the underwriters of the hull, whose agents "in Manila are the captain of the Nippon and Messrs. Ker Company. "We are informally authorized to request such a meeting by Messrs. "O'Brien & De Witt, representing the underwriters of the salvage of "the vessel, and by Messrs. Rohde & Wright, representing the under- "writers of the cargo. We suggest that the meeting be held at two "o'clock this afternoon in our office, but shall of course be willing "to meet your wishes as to time and place, urging, however, that the "meeting be held as early as possible.

"Our purpose in asking for the meeting and for the information "we have specified is, in the first place, the natural desire of the in- "terested parties to understand the situation, particularly because of "the prevalence of rumors more or less trustworthy, and, secondly, "because we believe it to be for the interests of all concerned that,

"without any waiver of rights or obligations, all parties should

98 "give any advice and assistance within their power for the "furtherance of the common purpose of saving the "Nippon." "If it appears from the information you can give us that we have any "information, advice, or assistance which we can give your clients "in the matter, without admitting their contentions, we believe that "we should do so.

"We suggest that the matter be handled by a conference, rather "than by an exchange of letters, or otherwise, because it seems to "us very necessary to save time. We shall appreciate a reply by "telephone, as soon as you are prepared to answer our request, in or- "der to settle the time and place of meeting, so that we may advise "the interested parties for whom we speak. Yours very truly, Bruce "Lawrence Ross & Block, By (Sgd) W. H. Lawrence."

Plaintiffs' Exhibit "I" is a verbatim report of the proceedings at the conference held upon the suggestion contained in the letter Exhibit "H", and is as follows:

"Conference held at the Office of Bruce, Lawrence, Ross & Block, "Manila, P. I., on June 16th, 1913, in re S. S. 'Nippon'.

"Present Messrs. W. H. Lawrence, W. J. Rohde, C. C. Cohn, S. "Erlanger, J. S. Reis, C. A. De Witt, U. M. Underwood and Captain "Eggert. Mr. C. C. Cohn, representing Messrs. Erlanger & Galinger, "stated: The situation is about this:—At the beginning and until "quite recently, the cargo which is of a perishable nature, has been "the chief concern and the principal efforts have been devoted to its

"salvage. This was due, not only to its perishable nature, but

99 "to the fact that such is the logical sequence since the cargo "in the holds prevented the inspection of the ship's bottom

"from the interior. All of the cargo that can be salved in a mer-
"chantable condition has now been brought ashore; the balance, as
"demonstrated by practical experiment is not worth saving. In the
"meantime the salvage of the ship itself has been going on as far as
"possible. A large number of holes have been found and repaired
"and her present condition is about as follows: Number one hold
"is quite intact. There are no holes in the bottom of this hold, the
"only water in the same having entered through the sluices which
"were open. Number two hold was pretty seriously damaged. The
"margin plates, at the edge of the tank top, were separated from the
"ship's frame for a considerable length. This breach has been filled
"with pine wedges, which, absorbing the water, swell or expand suf-
"ficiently to close the breach. All of the rivet holes have been closed
"as well by Oregon pine pegs. This work has been capped
100 "by a covering of hydraulic concrete which sets and holds
"the falsework in place and aids in making the closure water
"tight. That hold is now in a tight condition as we have demon-
"strated to our own satisfaction by pumping the water out to the ex-
"tent deemed advisable. After satisfying ourselves that a pump
"could control the water in this hold we desisted, because we have
"not wished to lighten the vessel forward to an undue degree lest the
"vessel move prematurely.

"The engine room has a hole in the bottom on which we are now
"at work. This work has been impeded by the fact that there is
"free communication through the bulkhead between the engine room
"and number three hold, and the foul water and rotting copra flows
"in so rapidly that active operations are useless until the condition
"in Number three hold is improved.

"Number Three—Work is being concentrated on number three
"hold at the present time; the rotten copra there is being jettisoned
"with the pumps and work is progressing on the hole which is there.
"When that is completed we can readily tell whether there is any
"hole under the thwart ship bunkers as has been suspected. So far
"as the outside examination discloses there is no hole under the bunk-
"ers and it is hoped that there are none such and that the water all
"comes from the holes in Number three and in the bottom of the
"engine room. If that proves to be the case it will be unnecessary
"to unload the 450 tons of coal in the bunkers, which will be service-
"able as ballast after the ship is afloat. If the stoppage of the accessi-
"ble holes in Number three and in the engine room does not keep
"out the water, we shall be forced to decide that there is a hole under
"the coal and the bunkers will have to be emptied.

"Number four hold, like number one, is intact and all the water
"there came in from the open sluices.

"All of the energies are now being concentrated on Num-
101 "ber three hold. The bottom of number three has been
"bulged in by the rocks and opened up, and that opening is
"being filled with pine wedges at the present time.

"About forty per cent. of the cargo has been salved; I do not know
"how much has been pumped out. Our pumps have a capacity of

" 29,000 gallons a minute. No more of the copra can be salved. It is " all in liquid form. We brought some of it in but it was so rotten " that they would not allow us to put it on the pier."

Mr. Lawrence: When do you expect to get the ship afloat?

Mr. Cohn: We cannot tell that.

Mr. Lawrence: I take it that the immediate purpose is to stop the holes?

Mr. Cohn: That is all being done as rapidly as possible.

Mr. Lawrence: When that is done do you think anything will be necessary to take advantage of the tide to pull it off?

Mr. Cohn: When the holes are stopped up and the water can be pumped out she will float at any tide.

The problematic element, that makes it impossible to say when she will be floated, consists of the fact that her bottom from Number two hold to number three rests flat on the rocks reached nor examined from the outside, while her bottom is concealed on the inside by a bolted ceiling of thick planking. This planking must be removed for the interior inspection.

Mr. Lawrence: Can they plug up the rest of the holes, pump her out and make that examination?

Mr. Cohn: Yes; when we get the larger holes filled and covered we will know about it. They reduced the water in number two hold eighteen inches in less than an hour. Now we are working on the after holds—in the engine room and number three.

102 Mr. Lawrence: Is there any assistance or any appliance that you could make use of that you have not at your command?

Mr. Cohn: None; we have everything we can possibly use.

Mr. De Witt: Has request been made on the part of the owners to assist in the salvage?

Mr. Cohn: I do not know that the question is germane to this meeting.

Mr. Lawrence: It is not. I excluded those questions from the request for this meeting.

Mr. Cohn: No; they have not.

Mr. Lawrence: What equipment have you there?

Mr. Cohn: We have three 30-horsepower boilers; a 6-inch gasoline pump with a capacity of 1,500 gallons; a 7-inch gasoline pump with a capacity of 2,000 gallons; an 8-inch gasoline pump with a capacity of 2,500 gallons; a steam 6-inch pump with a capacity of 5,000 gallons; a 7-inch steam pump with a capacity of 7,500 gallons; an 8-inch compound pump, steam power, with a capacity of 9,600 gallons. In addition to that we have since sent out a 10-inch steam pump and boilers. There are also three complete diving outfits; hydraulic jacks; screw jacks; heavy timbers of all kinds; cement, sand; gravel; blocks and tackle; dredges; pegs; torches; baskets; piping of all kinds; bolts; valves; canvass; oakum; lead; sheet rubber—all things that may be required. There is nothing you could think of that we could possibly use that we have not got. There is now one coastguard vessel and

the Borongan employed in our service. We have anchors out from the wreck in every direction.

Mr. Lawrence asked whether anybody desired to ask Mr. Cohn any further questions.

103 Mr. Cohn: Is my understanding correct that there is nobody present who has any suggestions to make for the bettering of the situation or improvement of the salvage service?

" To this inquiry there was no reply.

" (No further questions were asked.)"

Testimony of Mr. Reis, continued.

Q. Mr. Reis, do you know if all the general cargo of the Nippon was saved, that is the cargo other than the copra?

A. Yes, sir, it was.

Q. How about the copra?

A. With the exception of about 350 tons it was all brought in, approximately that amount.

Q. Why did you fail to save the 350 tons which was not brought in?

A. The value of the copra was so small, that is the part we didn't bring in, that it would not have paid us to bring it in and we jettisoned it.

Q. Why was it necessary to jettison it?

A. We couldn't bring it in here, we couldn't afford to bring it in, we couldn't get anything for it.

Q. Why not?

A. It was so rotten you couldn't do anything with it.

Q. What objection was there to leaving it in the holds of the vessel, if any?

A. It would have killed everybody off if you had left it there much longer, the gasses were generating in that rotten copra from the time we took over the salvage and it kept getting worse all the time, it was so bad that the men couldn't work in it any longer.

Q. Are you familiar with the prices which this copra brought, Mr. Reis?

A. Yes, I know what the copra brought in the market here in Manila.

Q. What price did it bring here?

A. It brought about P16. a ton here.

104 Q. And what was the normal price of copra in the market here?

A. P14 or P15 per picul.

Q. What would be the proportion between the value which this copra would bring in the market here and the cost of salving it?

A. To bring it in here by lighter from Scarborough Reef, we would have had to tow it in because you couldn't get any boat to carry it in the condition it was in, it would have been probably P1.25 or P1.50 a picul for the handling and hauling of it and we probably wouldn't have gotten any more than that out of it.

Q. By what means was this rotten copra referred to in your previous answers removed from the holds of the Nippon?

A. We did it with clam shells or orange peel buckets, they are a steel bucket that is let down by a cable and open up when let down and then when they are filled they are closed up and hauled up, in other words they are a sort of a steam shovel.

Q. How many of these clam shell buckets were sent out there for this work?

A. We sent out three.

Q. State whether you know why clam shell buckets were not used to move the good copra, that is the dry copra?

A. They were not used on the good copra by my orders, they wanted to start to use them in the beginning but I wouldn't permit it, if they had been used at the first we only could have used them right over the hatches for a space the size of the hatch, they can't be slewed back under the wings of the hold, and we couldn't have saved anywhere near the amount of copra we did by taking
105 it out and sacking it. We took it out and dumped it into a lighter alongside and sacked it.

Q. The clam shell hangs on a line attached to the end of what is known as a swinging boom does it not?

A. Yes, sir.

Q. Did the men at work on the Nippon request you to send out some of these clam shells from the first part of the operations?

A. Yes, they did, some of them seemed to think that we ought to try to save the ship regardless of the cargo, but as I was trying to save as much of the cargo as possible and knew that we couldn't do it by using these clam shells I refused to send them out until they got out all of the good copra that could be gotten out; we went after the good corpra and got that out first and then I sent out the clam shells.

Q. Mr. Reise you have stated that the equipment used in the salvage operations carried on on the Nippon which was not purchased by your firm was acquired from the owners thereof under guarantees by which they became responsible for any loss or damage?

A. Yes, sir.

Q. Were those guarantees in writing?

A. Yes, I think they were.

Q. Please examine this group of correspondence, which I ask be marked Exhibit "J" for identification, and state if those are the letters to which you referred showing the terms under which this equipment was received by your firm?

106 A. Yes, with the exception that they do not all appear here, there are some memorandum receipts from the Bureau of Navigation and they were signed and returned to the Bureau of Navigation, I signed them for the firm.

Mr. Fisher: I ask that this correspondence, Exhibit "J", be admitted in evidence.

No objection.

NOTE: By stipulation of counsel the correspondence introduced in evidence as plaintiff's Exhibit "J" is omitted, its general purport being shown by the testimony of the witnesses by whom it was identified.

Q. Please state whether or not this group of letters referred to as Exhibit "J" includes all of the guarantees undertaken by your firm in connection with the use of this borrowed equipment?

A. No, sir, it does not, under our charter party with the different steamships we are responsible for any extraordinary services undertaken by them.

Q. Mr. Reis, please look at the memorandum receipts appearing in that file of papers Exhibit "J" and state if those papers cover all or only a part of the borrowed equipment used by your firm in those salvage operations?

A. Only a part, some of them have been returned to the parties from whom we got the equipment.

Q. The others are all written or printed forms such as appear here?

A. Yes, sir.

That is all.

Cross-examination by Mr. Rohde:

Q. You, on behalf of Messrs. Erlanger & Galinger, had entire charge of this salvage proposition, Mr. Reis?

107 A. Not entire charge, I followed out Mr. Erlanger's instructions in connection with it, but I gave the instructions to the men on the ship.

Q. You made arrangements for the implements and ships of the Bureau of Navigation?

A. Yes, sir.

Q. You stated that you chartered the Mindoro for the first time at about six o'clock on May 16?

A. No, I did not, I stated that I asked the director of Navigation if he had a vessel I could charter early in the afternoon of May 14th for the first time.

Q. That was on May 14?

A. Yes, and I definitely agreed to take the boat about six o'clock in the evening of the same day.

Q. About six o'clock?

A. Yes, about that, I wouldn't be sure but it was somewhere from half-past five to six.

Q. The news that the Nippon was abandoned you say you learned on May 13th?

A. May 13th, through the evening papers, yes.

Q. Did you know anything about the Nippon at that time before you read of the wreck and abandonment in the papers on that day, had you ever seen her?

A. Yes, I had seen her here in Manila Bay.

Q. And you knew that she was loaded with copra?

A. No, I was not sure what she was loaded with, not then, I knew that she loaded out of here with some kind of a cargo.

Q. Did you know who loaded her?

108 A. No, not then.

Q. Did you know who her agents were or whether she had any here in Manila or not?

A. No. That is all on the 13th you are asking me about now?

Q. On May 14th did you know anything about what her cargo was or who the agents were?

A. Yes.

Q. On May 14th you made efforts to find out about her?

A. Yes, on May 14th we did.

Q. What efforts did you make?

A. Yes, after we learned of her abandonment and chartered a boat to go out there we found out what she was loaded with and how she was loaded and who loaded her here.

Q. My question is whether you made any efforts to find out who were the parties, if any, here in Manila who were interested in the ship or her cargo or the representatives of the parties interested in the ship or cargo?

A. No, sir.

Q. You made no efforts in that direction?

A. No, sir.

Q. You say that the newspapers on May 13th printed a wireless telegram from the Manchuria regarding the condition of the Nippon?

A. I said the afternoon paper printed a purported telegram from the Manchuria, a wireless.

Q. Did you try to communicate with Captain Eggert, the master of the Nippon?

A. No, sir.

Q. You are aware of the fact, are you not, that you could

109 have communicated with Captain Eggert by wireless?

A. No, I am not aware of it.

Q. You knew that he was on board the Manchuria did you not?

A. Yes, sir.

Q. And the Manchuria telegraphed to Manila didn't she?

A. Yes, sir.

Q. I suppose then Manila could have telegraphed to the Manchuria couldn't she?

A. There is no commercial wireless in Manila that I know of.

Q. But the wireless station here does send messages to vessels does it not?

A. They will in regard to the arrival and departure of vessels, but I do not know as they will accept any commercial telegrams.

Q. Do you consider it for commercial purposes to wire to the captain of a wrecked vessel what he intends to do in connection with such vessel?

A. I did not endeavor to do it.

Q. When did you first speak to the Director of the Bureau of Navigation, Mr. Reis?

A. Early in the afternoon of the 14th of May.

Q. What was the subject of your first conversation?

A. I called him up and asked him if I could charter a boat to send out to the wrecked steamer Nippon.

Q. That was after you had read the evening paper?

A. Yes, on the 14th, I read the evening paper on the 13th.

Q. And what did he say?

A. He said that he would charter me a boat but that at that time there was only one at his disposal and he had just received
110 word that it had just passed Corregidor.

Q. That was the Mindoro?

A. Yes, sir.

Q. And that boat was just returning from a trip to Scarborough Reef?

A. She was coming to Manila from Santa Cruz, Zambales, she had been to Scarborough Reef and from there went to Santa Cruz, Zambales where she picked up part of the crew of the Nippon who had gone ashore there in one of the life boats and was bring- them in to Manila.

Q. Who was in charge of the Mindoro?

A. Captain Anderson.

Q. And Captain Anderson immediately upon landing in Manila on that evening became an employee of the firm of Erlanger & Galinger?

A. He never became an employee of the firm of Erlanger & Galinger as long as he was in command of the Mindoro.

Q. How long did he remain in command of the Mindoro?

A. I do not know exactly now when he left there but it was sometime in the latter part of May.

Q. And then he became an employee of Erlanger & Galinger?

A. Yes, sir.

Q. Ben Taylor, who is Ben Taylor?

A. Ben Taylor is a man who has been around Manila here for about fourteen or fifteen years and on the China coast for the last twenty or thirty years, and he is one of the best known stevedores and wreckers in the Far East.

Q. Has he ever been the captain of a vessel of any kind?

A. I don't think so.

111 Q. Has he ever been any kind of an officer on a ship?

A. No, he is a stevedore.

Q. Has he ever had a stevedoring business in Manila during the last fifteen years?

A. He used to have a stevedoring business in Iloilo, and also in Cebu, he had the largest stevedoring business in Iloilo for a number of years.

Q. Mr. Taylor was an employee of the Bureau of Navigation, was he not, on the 14th of May?

A. He was a laborer there, that is he was on the day payroll, paid by the day.

Q. He was a day laborer in the Bureau of Navigation on the 13th of May of last year?

A. I don't know if he was on the payroll there then or not, I know he was there on the 14th.

Q. And Mr. Taylor became an employee of Erlanger & Galinger on that day, the 14th of May, did he not?

A. Yes, sir.

Q. Who were the rest of the Americans or Europeans employed on this work by Erlanger & Galinger you have mentioned?

A. Mr. Rutledge, dock master at the Bureau of Navigation, Mr. Flor, also employed at the Bureau of Navigation, Mr. Johnson, chief diver of the Atlantic Gulf & Pacific Co., Mr. Handysides, and Mr. Brown.

Q. You had been an officer of the Bureau of Navigation yourself had you not?

A. I had been an official, not an officer, I am not a sailing man.

Q. Do you know Mr. Streppel of Struckman & Co?

A. I know him by sight.

112 Q. You never had any conversation with him?

A. Yes, over the telephone once or twice.

Q. When did you first learn, when did Erlanger & Galinger first learn that there was any opposition on the part of the owners of the ship and the owners of the cargo of hemp on board the ship to your interference with the ship and attempted salvage of it?

A. After we got out there, after we had sent a ship out there.

Q. That was the first you knew of it?

A. Yes, after we sent a ship out there there were complaints and reported complaints from a number of people, but at that time we did not know whether they were the owners of the ship or the cargo or the underwriters of it or who they were.

Q. Messrs. Ker & Co. and Struckman & Co. and a great many more were opposing you- interference in the matter at that time were they not?

A. Yes, sir.

Q. Before you had chartered any other vessel than the Mindoro, weren't they?

A. No, we had chartered the Mauban and the Vizcaya before we heard any holler from any of them, there were so many people kicking about it by that time that we did not know who any of them were or who they represented at first; we chartered the Mauban and the Vizcaya on that same day, the 14th I think, although they did not pass to us until such time as they were discharged in the river here, but I think we chartered them on the 14th.

Q. The instructions you say that were given to Ben Taylor

113 and those with him on the Mindoro who went out to the Nippon on the night of the 14th were that they were to take possession of the Nippon?

A. Yes, sir, in the name of Erlanger & Galinger.

Q. And to maintain their possession?

—. —.

Q. You didn't want them to throw overboard anybody that might be left on board did you?

A. The only thing there was left on there was a few bum sausages outside of the cargo.

Q. Do you know whether Messrs. Erlanger & Galinger have ever at any time had any experience in the matter of salving wrecked vessels?

A. I do not know whether they have or not.

Q. It is not a part of their general business is it?

A. No, sir.

Q. Mr. Erlanger gave you instructions as to how this salvage was to be conducted?

A. No, sir, he did not give me directions as to how the salvage was to be made, he turned that over to me.

Q. And you stayed ashore in the office and gave directions from there?

A. Yes, sir.

Q. And who was the directing head on the Nippon itself?

A. Captain Taylor until he was relieved by Captain Anderson.

Q. Captain Taylor you say?

A. Well, when a man takes charge of a ship you generally call him a captain.

Q. Mr. Taylor was captain of the Nippon then?

A. Yes, sir.

114 Q. Before this was Mr. Taylor ever master of a vessel?

A. No, I think not. Yes, I will change that, I knew Mr. Taylor when he was the captain of the launch "Fanny" in Iloilo, he was working for me at that time while I was working for the railroad company.

Q. How long was he in charge of the operations on the Nippon?

A. I should say a couple of weeks.

Q. And then Captain Anderson of the Mindoro took charge?

A. Yes, sir.

Q. You say that you refused to send out clam shells or orange peels although the people on board requested that they be sent out?

A. Yes, sir.

Q. For the reason that you considered it would harm the copra?

A. Yes, sir.

Q. A great deal of the copra that came to Manila had been wet and still sold at a very fair price did it not?

A. Well, the first couple of lots sold at a very fair price, yes, because at that time they didn't know anything about it evidently.

Q. But the first copra brought a very fair price?

A. Yes, but just as soon as it was sold you could see by the prices offered for the next lot that they didn't care to handle any more of it, as soon as the buyers here tried to use or sell it they found it of such inferior quality they couldn't get much for it.

Q. That was because the copra had been submerged too long wasn't it?

A. Well, I don't know, it was submerged for about eight or

115 nine days when we got out there.

Q. Well, I mean to say that the first few lots of copra

brought a good price in the market here although it was wet, didn't it?

A. No, they didn't bring a good price, because the first lot that was brought in here from the Nippon only had some wet copra mixed in with it, it was not all wet.

Q. Do you mean to say that if the copra had been submerged in water by the use of clam shells or orange peels and had been brought in to Manila within two days or three days after having been wet by the use of such instruments that it would have resulted in any loss?

A. We would not have gotten twenty-five per cent of the prices we did get by handling it by hand and sacking it.

Q. Just by the wetting of it for that period of two or three days?

A. Yes, sir; and in addition to getting wet a whole lot of it would have been mashed up by the use of these clam shells, you couldn't avoid it.

Q. And that is the reason these clam shells or orange peels were not used?

A. Yes, sir, we were out there to save all of the cargo possible as well as the ship.

Q. Otherwise you understand that by the use of those instrumentalities, these clam shells or orange peels this copra could have been much more rapidly taken out?

A. No, sir, it couldn't, because how are you going to get it in here after you get it out of the holds? You might be able to get it
116 out quicker yes, if that was the object, and you didn't care anything about saving it, we were out there to save it if possible.

Q. Get it in to Manila you mean?

A. Yes, sir, when the first lot came into Manila on the Borongan, that is the first lot of damaged copra, it came in loose, we used baskets to load it and just dumped it in loose. This was not entirely we- copra, it was partly wet and partly dry and as we thought out there in fairly good condition, and after that lot we never tried it again and we were told that if any other man ever tried to put any wet copra on any of the piers he would get shot, the Insular Collector of Customs ordered us to put this lot on Pier No. 5. Besides that you couldn't get any of the vessels to carry it loose in the condition it was in.

Q. What time are you speaking of now?

A. The end of May, that was the first wet copra that we brought in here, the first damaged copra, and that was brought in loose, and we got our orders then from the Collector of Customs that we would not be allowed to put any more wet copra on the piers or river walls; I wouldn't care to be the one to try bringing any more copra of that kind into Manila.

Q. Have you the records of the dates when the various lots of copra came to Manila and when they were sold?

A. No, sir, but we can find it out for you from the logs of the various vessels, I haven't made up a recapitulation of that but we can do it for you.

Q. And the dates of the sales?
117 A. Yes, sir.
Q. But you haven't the dates of when this copra got to Manila?
A. I can get it all for you from the ships' logs.
Q. You say that all of the copra but how many tons was brought to Manila?
A. All but approximately three hundred and fifty tons, I judge about that, we haven't the exact figures of that.
Q. How many tons were not sold after being brought to Manila?
A. It was all sold.
Q. All sold?
A. Yes, all but about three hundred and fifty tons as I say, that is not the exact figure that is the estimate that is placed on it and is as near as we could get to it.
Q. Do you know how many tons were sold here in Manila?
A. I think about fourteen or fifteen hundred tons, somewhere around there.

That is all.

Redirect examination by Mr. Fisher:

Q. You stated that the Collector of Customs would not permit any more wet or damaged copra or part of which was wet to be placed on the piers here in Manila?
A. Yes, sir.
Q. Will you state why?
A. On account of the stench, it was continually generating gass and the stench was something fierce.
Q. You yourself saw that copra and saw the condition it was in, the lot which was placed on the pier here?
A. Yes, sir, and it was pretty bad.
118 Q. You stated in your cross-examination that Mr. Taylor was a day laborer of the Bureau of Navigation. Was Captain Taylor ever employed by the Bureau of Navigation?
A. Yes, sir.
Q. While you were employed there as Assistant Director of that Bureau?
A. Yes, sir.
Q. Please state what work he was doing while employed there?
A. Chief stevedore.
Q. What is the distinction, if any, between men in the Bureau of Navigation referred to as day laborers and those referred to as employees of the Bureau?
A. He was not on the regular payroll of the Bureau; that is he was paid by the day; it is merely the method of distinguishing between those men who were regular civil service employees and those who were not in the service; the temporary men and so on.
Q. Plase state, Mr. Reis, why you selected such a large proportion of the men employed by you in these salvage operations from the Bureau of Navigation?

A. I knew the men and knew their qualifications and they were about the only men we could get here at the time.

Q. Can you state, Mr. Reis, from your experience and nautical knowledge whether there were any other men to be obtained in Manila at the time of this occurrence with the qualifications necessary?

A. There were one or two men in Manila at the time who were probably just as well qualified to do this work as the ones we had out there, but I couldn't get them at that time.

119 Q. What members of the firm of Erlanger & Galinger were present in Manila during the time of these operations?

A. Mr. Simon Erlanger.

Q. Mr. Isodore Erlanger was not present at that time?

A. No, sir; he was in the States.

That is all.

Cross-examination.

By Mr. Rohde:

Q. The £15,000 Sterling, what were they worth in Manila in Philippines currency?

A. I could not tell you now offhand, but I can tell you from our records.

That is all.

Re-direct examination.

By Mr. Fisher:

Q. Was that £15,000 Sterling net in Manila or £15,000 less the exchange?

A. Less the exchange.

NOTE: The witness returned to the stand and after having telephoned to the office of Erlanger and Galinger was again examined in relation to this point.

Q. Since you left the stand have you now ascertained what was the net amount received by Erlanger & Galinger for this £15,000 Sterling?

A. Yes, sir; P145,800.

Q. And that amount was paid by them as a result of extra-judicial proceedings between plaintiff and the owners of the hull?

A. Yes, sir.

Witness excused.

120 Mr. FERRIER, a witness called by the plaintiff, being first duly sworn in open court, testified as follows:

Direct examination.

By Mr. Cohn:

Q. Please state your name, occupation, and address.

A. J. W. Ferrier, Insular Special Deputy Collector of Customs, Manila.

Q. Do the records of the custom house at Manila show the arrival of the general and bulk cargo of the S. S. "Nippon" that was landed at the Port of Manila after the wreck of the vessel?

A. Yes, sir.

Q. Now what disposition was made of the copra brought into Manila?

A. It was all sold at public auction.

Q. What disposition was made of the general cargo?

A. Three lots of it were released under order of the court to representatives of the owners, all of the remainder of it except some small articles belonging to members of the crew were sold at public auction with the exception of one lot which was found to be of no value in the City of Manila at least; we could find no buyers for it at any price or secure any offers for it and it was ultimately destroyed by order of the court, and the proceeds of these sales are at present in the possession of the Insular Collector of Customs.

Q. And the proceeds from the sale of the copra?

A. The proceeds from the sale of the copra are deposited in the Hongkong & Shanghai Bank, by order of the court, the net
121 proceeds.

Q. By the net proceeds you mean the gross proceeds less the costs and disbursements of the Collector of Customs?

A. Yes, sir.

Q. What is the total amount still in the hands of the Collector of Customs as the proceeds from the sale of this general cargo?

A. P5,939.68.

Q. Now generally speaking, Mr. Ferrier, how do the dates of the arrival of the various installments of copra cargo compare with the dates when those installments were sold?

A. Well, the first lot of copra arrived on May 20, 1913, and was sold on May 29, 1913; the second lot of copra arrived on May 23 and was sold on May 31; two lots arrived on May 25, part of which was dry and part of which was wet; the wet was sold on May 31 and the dry was sold on June 7; the next lot arrived May 27, part of which was wet and part of which was dry; both lots were sold on June 2; the next lot arrived May 29 and was sold June 5; the next lot arrived May 31, partly wet and partly dry, the damaged portion of which was sold on June 5 and the dry portion of which was sold on June 7; the next lot arrived on June 2, partly wet and partly dry, the dry portion of which was sold on June 6 and the wet portion on June 5; the next arrival was on June 3, of which the dry portion was sold on June 7 and the wet on June 6; the next arrival was on June

5, part of which was dry and part wet, the dry portion of which was sold on June 10th; it was all sold June 10, both wet and dry; there was also another arrival on another boat on June 5, the dry
122 portion of which was sold on June 11 and the wet portion on June 10; the next arrival was on June 8, all of which was wet and was sold on June 12; the next arrival was on June 9, also wet, and was sold on June 12; the next arrival was on June 11, wet, and sold on the 16th; the next arrival was June 15, also wet and it was sold on the 18th; the next arrival was on June 28, wet, and it was sold on the 3d of July; there was also a small shipment received on June 24, which was wet and it was sold June 25; then there was some copra brought in on lighters July 14 and sold on the same day; then there was a small amount of copra brought in on a launch, presumably from Olongapo, at a later date and sold on August 8, the date of the arrival of this lot is not shown on this record.

Q. I hand you the document Exhibit "K" and ask you to please identify it.

A. That is a record prepared by me from the records of the Bureau of Customs for the signature of the Insular Collector of Customs certifying as to the merchandise received by the Insular Collector of Customs from the wrecked steamer Nippon, the general condition at the time of receipt, the date upon which sold, and the amount realized from its sale.

Mr. Cohn: We offer in evidence the document Exhibit "K." That is all for this witness.

No objection.

NOTE: By stipulation of counsel the document introduced in evidence as plaintiff's Exhibit "K" is omitted. It is a statement by the Insular Collector of Customs of the merchandise taken from
123 the S. S. "Nippon" by plaintiffs, the dates upon which the various lots of such merchandise were brought to Manila by plaintiffs, and turned over to the customs officials, the persons to whom the same was sold by order of the Court, and the amount received for each lot. It shows that the net proceeds of the cargo of the "Nippon" brought to Manila by plaintiffs was P154,365.23.

Cross-examination.

By Mr. Rohde:

Q. In this document Exhibit "K" where the copra is marked as damaged does that mean the same as where you have stated that it was wet?

A. Yes, sir.

Q. And this word damaged simply means that the copra was more or less affected by water?

A. The first damaged copra was not severely wet, the last items, particularly the one of 350,000 kilos was very badly damaged judging from its smell and looks; that is the only lot of copra that was not weighed; we had no way of handling it to weigh it, but that is

the estimated weight we put on it and the weight at which the sale was made; all the other items were weighed.

Q. This lot that you have just referred to and which you say you did not weigh, when did that come in here?

A. I think that got here about the 14th of July.

That is all.

Re-direct examination.

By Mr. Cohn:

Q. Why didn't you weigh that 350,000 kilo lot of copra you have just referred to?

A. Owing to the condition of the copra it was deemed advisable to get rid of it at the earliest possible date and it was in such condition that we could not well weigh it and the weight was estimated and it was sold at that weight and the buyers bought it at the estimated weight.

That is all.

Witness excused.

124 Mr. SIMMIE, a witness called by the plaintiff, being first duly sworn in open court, testified as follows:

Direct examination.

By Mr. Fisher:

Q. Please state your name, occupation, and residence?

A. George W. Simmie, contractor, Manila.

Q. You are engaged in the stevedoring business in the City of Manila, are you not?

A. Yes, sir.

Q. And have been for some seven years past here in Manila?

A. Yes, sir.

Q. Do you do a large portion of the stevedoring business here in Manila?

A. Yes, sir; at least half of it.

Q. Have you ever had any experience in loading or unloading copra on vessels?

A. Loading I have, unloading I have not.

Q. Will you please state whether during the month of May, 1913, you were requested by Messrs. Erlanger & Galinger to obtain laborers for them for work on the salvage of the Nippon?

A. Yes, sir, they did.

Q. And whether you furnished such laborers?

A. The first time they asked for laborers it was impossible to give them to them immediately.

Q. Why was that?

A. Owing to the great scarcity of labor of that kind here in Manila at that time, I had a contract for supplying laborers for the Quarter-

master Department at that time and they were moving a
125 large number of troops and supplies at that time and they were calling on me for anywhere from five to six hundred men a day and for that reason it was practically impossible to get men for this work at that time.

Q. Do you remember what part of May that was?

A. Somewhere near the middle, I should say.

Q. What is the ordinary pay for laborers for work in the holds of vessels here in Manila?

A. It varies somewhat with regard to the men; ordinary laborers get about a peso a day, but of course the capitas gets more and it varies according to what the man can do; if he is a winch driver, an old man and has worked a long time at the game, he would get a little more, and then sometimes where there is a special gang for some kind of work they will get a little more; the Government contract I think is something like P1.20, and that is of course on an hourly basis, so many hours to a day.

Q. Does that include subsistence?

A. Not in the day time, unless we have them standing by out in the bay somewhere waiting to load or unload a boat where they can't get ashore to get their subsistence, and at night we feed them always.

Q. Did you see any of these men who went out to work on the Nippon upon their return to Manila?

A. Yes, sir, pretty nearly every one of them I think, at different times, but I saw a number of them when they arrived from there.

Q. Did you notice anything abnormal in regard to any of them upon their return to Manila?

126 A. Yes, their eyes and faces were swollen up, their eyes were sore and watering and they had spots on their legs and they all claimed that it was sure death to go back *their* again and I had hard work to replace the crews as they came back from there, these men who returned from the work would tell their friends what a bad place it was to work and you had to get a new outfit every time.

Q. How many times did you get crews for Erlanger & Galinger for this work?

A. I should say about twice a week, whenever they asked for men we got all we could for them.

Q. What proportion of the men, Mr. Simmie, remained out there more than one trip?

A. Less than half of them, sometimes almost the entire crew that was sent out would come back on the same boat they went out on.

Q. What means, if any, did you adopt to overcome the objections of these men to going out there?

A. We had to give them more money, we promised them that there would always be a boat standing by there at the wreck in case of any accident or danger and that they would be properly fed while out there; they seemed to be afraid that when they got out there they would be forced to go down in the hold and work and we had to promise them that if they were sick or their eyes got bad or

anything they would not be driven down in the holds to work, we had to make them all kinds of promises and arguments to get them to go out there at all.

Q. You have supervised the stowing of copra upon vessels
127 in your stevedoring business here in Manila?

A. Oh yes.

Q. Frequently?

A. Yes, most all the copra that has been loaded in the Port here in the last few years has been put aboard by me.

Q. Now Mr. Simmie supposing that you were given the work of removing a cargo of copra from a wrecked vessel this vessel having holes in its bottom of such character and extent that there was continuously water in the holds in which the copra was stowed and so that this water would rise and fall with the tides, the water in the holds being about fifteen feet deep on the average, the copra being in what might be called three distinct layers, the top layer more or less dry, the middle laper wet and drained successively with the rise and fall of the tide, and the bottom layer constantly submerged in the water and more or less deteriorated by such submergence, and supposing you were interested in saving as much of this copra as it was possible to save, what means would you adopt for the handling of this copra?

A. Well, from the experience I have had in the handling and loading of copra I would sack it, as I do all of the copra that I handle. I have never discharged any copra here but I suppose it would be practically the same in the handling of it. We made, I think, one experiment in carrying it out in bulk in a lighter and loading it on in baskets and we found that we couldn't handle it anywhere near as fast as we could in sacks, in fact we could not use one third of the copra handling it in bulk in baskets that we could when it
128 was sacked, and you don't gain anything because it has to be sacked anyway.

Q. And how would you have proceeded to take out this cargo of copra under the conditions I have just described?

A. I would have had the men skim off the top part of it, that is the dry or more or less dry layer on top by hand and sack it and handle it in sacks, because you have to get it into your sacks soon or later any way, and if you dig down through this top strata until you strike the part where it is wet and partly decomposed you are bound to have a lot of this bad copra mixed in with the dry. I had one experience here of a ship coming in here to Manila with a cargo of bean that on account of a typhoon came in here with five or six feet of water in the cargo and we claimed that we could get a good part of this cargo out in good shape or fairly good condition, so we went out there with our men and just skimmed this good part off the top. You know that ordinarily a cargo of that kind the part that is wet or in the water will cake up and get rather hard and there is a separate layer to it and by working it by hand you can dig down to this wet layer or strata and to a certain extent this copra would do the same thing, but if you go to digging down into your wet

strata you are going to have your dry copra running down into the wet and mixing up with it.

Q. Is there any other mechanical means you can think of by which this copra could have been skimmed off the top, the dry copra, and handled to as great advantage as by sacking it?

129 A. In France they take it out with grabs, in Hamburg they still take it out in bags, generally they object to handling it in bulk and a large part of it is shipped in bags, it is generally considered that the best way to handle it is in bags.

Q. Could it have been gotten out with more advantage by the use of these grabs as you call them?

A. They wouldn't have been able to get anywhere near so much of it out in good condition, they would have to go right down through the good layer on the top and into the wet, that is the only way these grabs work, you have to drop them right down straight and with the whole weight of the grab or they won't work, and if you used these grabs you would have to have men down in the hold trimming down your copra towards the center otherwise your grab would be of no effect at all.

Q. Do you think from your experience as a stevedore, Mr. Simmie, that it would have been possible to remove the copra from the holds of this ship by the use of such mechanical means without mixing the dry copra with the wet and thus losing a large part of the dry copra or good copra?

A. You would have a very hard job to get it out with those grabs at all, you see the only way the grabs will work is straight down, you can't swing your grab back under the decks and you would have to have men down in there trimming the copra down so that the grab could work and when you let your grab down you have to let it right down all the way so that it would dig a hole down through the wet strata and your men down in there would be trimming the good copra down in with the bad. Then

130 only the cargo-s where they are in an open hold or a lighter is when you can work your grab to any advantage because as I said it will only work straight up and down. And another thing when you get your copra out with a grab you have to handle it again any way so that you don't save any time, you might just as well sack it in the first place.

Q. From your experience in the handling of copra have you noticed whether the condition of the atmosphere has any effect on the condition of the copra, the atmosphere in the hold?

A. Why yes, in loading it here in Manila I have had the men fall down in the holds, get sick, overcome by the gasses, in the main we have to be very careful in the loading of copra to see that none of the men get killed working in it, we always put up wind sails and do everything we can to keep the air good.

Q. That is copra in good condition, what would be the effect if the copra was wet and the air hot?

A. There is no difference you might say, the copra is nearly all wet or more or less dampness in it and it is always generating this gas and there is more or less heat from it and in a room where it is con-

fined or a hold of a ship it is strong enough so if a man goes down there the air gets so poor, so much gas they can't exist any longer, a man just loses his senses, we have had to carry men out several times when they were unconscious.

Q. From your observation of copra and your experience in
131 handling copra what the effect of dampness upon it is, and what would be the effect in the hold of a vessel where the cargo was wet and where the temperature of the atmosphere was one hundred degrees?

A. Of course the air is very bad, the copra is throwing off gas all the time, when it rains we do not load copra on account of this gas, if it gets wet it throws off more gas.

Q. State whether or not the wet or damp copra in that condition of heat throws off more gas than the dryer copra, if you have noticed?

A. Why yes, the copra getting wet is what causes the gas to form, these conditions always exist when the copra is in a wet or damp condition.

That is all.

Cross-examination by Mr. Rohde:

Q. Do you know the depth of the holds in the Nippon, Mr. Simmie?

A. I could not say exactly, no, she is a three deck ship, I do not think the lower hold is more than--I should say it is somewhere around fourteen feet, something like that.

Q. In using what you have called grabs, that is the same instrument we have referred to here as clam shells and orange peels is it not?

A. Yes, any kind of a grab, the same thing, they all work practically the same.

Q. The upper strata could be taken off, could it not, for a
132 depth of four or five feet?

A. Just in the square of the hatch, yes, you could work it, but even then you would be bound to mix the dry copra with the wet, you couldn't avoid it.

Q. Just in the square of the hatch?

A. Yes, you couldn't get your grab in under the hatch combings in under the deck, you can't throw it over to one side, it has to work straight up and down; you would have to have just as many men working down in the hold trimming the copra down from the sides so you could work your grab, we have had a whole lot of that work and we find that you don't gain anything by using them.

Q. But by the use of those instrumentalities the cargo of copra could have been taken out very rapidly could it not?

A. You couldn't have gotten very much of the copra out that way because the square of the hatch would not be more than about one-sixth of the size of the hold and you could only work your grab right in the hold unless you want to put a bunch of men down in there to keep the copra trimmed down under the hatch opening.

Q. Then do you mean to say these grabs as you call them should not be used at all?

A. I wouldn't do it, you have got to sack the copra in the end at any rate. What are you going to do with the copra? You can get it up on the deck but then you have to move it to handle it, it would just make an extra handling of it and you wouldn't gain anything by it.

Q. But after you got the copra up on the deck it would not be dangerous to the persons working with it and sacking it
133 would it?

A. You would have to have some of the men working down there in the holds anyway trimming the copra down, because you couldn't get enough of it out working just in the square of the hatch to do any good so you would have to have the men down in there anyway.

Q. So even with the grabs or orange peels you would have to have just as many men down in the holds?

A. Yes, you would have to have just as many.

Q. How many men would you need in the holds?

A. That I don't know, it would depend on the man who was running the job, one man might get along with the work with ten men down there and another might want one hundred working below, there would be no way of judging that without being on the spot.

Q. Can't you tell approximately from your experience and observation how many men you would have to have down in the holds trimming the copra down from the sides as you say?

A. I never took any copra out of a ship with a grab or a clam shell and I would have to know the kind of a place it was to come out of.

Q. You don't know anything about it then, working with grabs and taking it out in that way, you don't know how many men it would require?

A. It depends on how fast they would be able to trim it down under the hatches and how big your hatch is and how fast you could work your grab.

Q. Have you ever worked unloading a cargo with a grab?

A. Yes, sir, in copra no.

134 Q. Have you ever unloaded a cargo of anything else with grabs?

A. Coal yes.

That is all.

Redirect examination by Mr. Fisher:

Q. Did you load the Nippon when she was in port?

A. Yes, sir.

Q. From your knowledge of the way in which this copra was stowed on the Nippon what portion of it would it have been possible to take out with grabs?

A. Well, the cargo was stowed, if I remember right, in No. 3, and 6 and possible No. 4 holds, and it was stowed right up to the decks,

these are all lower holds; as near as I can remember this vessel is subdivided horizontally and it is what is called a three deck ship.

Q. Would this arrangement have any effect on the scope or area which you could reach with grabs or clam shells?

A. Oh yes, that would make a big difference, because you could only work, as I said before, in the square of the hatch, and when you dug it out of the center it would run down to some extent from the sides and then that stowed back under the decks you would have to have men in there trimming out, it would be a poor place to work your grabs.

Q. Were the openings in the different decks of the vessel all one below the other perpendicularly?

A. Yes, sir.

That is all.

Witness excused.

135 Mr. TAYLOR, a witness called by the plaintiff, being first duly sworn in open court, testified as follows:

Direct examination by Mr. Fisher:

Q. Please state your name, occupation, and address.

A. Benjamin Franklin Taylor, professional stevedore, Manila.

Q. How long have you been living in the Philippine Islands?

A. Nineteen years, sir.

Q. What business have you been engaged in since you have been in the Philippine Islands?

A. Fourteen years in the stevedoring business, sir.

Q. Where have you been engaged, employed, or occupied during the last four years?

A. For about three years I have been in the Bureau of Navigation.

Q. In what capacity?

A. As stevedore and experienced wrecker, sir.

Q. Before being connected with the Government what were you doing?

A. I was working in Manila, Iloilo, and Cebu as a master stevedore, not an employee but as a master stevedore with my own men under me.

Q. And you owned your own equipment?

A. Yes, sir.

Q. How extensive was your stevedoring business in Iloilo and Cebu?

A. Four to five thousand pesos a month.

Q. Did you devote your time entirely to the stevedoring business at that time?

136 A. Absolutely, sir.

Q. State whether you are familiar with the methods for loading and unloading cargo on vessels?

A. Absolutely, yes, sir, that is my business.

Q. Have you ever had any experience in loading and unloading cargo-s of copra?

A. Yes, sir.
Q. Where?
A. Here in Manila, sir.
Q. Have you ever handled any cargo-s of copra in bulk?
A. I have, sir.
A. Frequently?
A. Yes, sir, I have handled two hundred thousand tons of it.
Q. Did you ever see the SS "Nippon" prior to the time she was wrecked?
A. I saw her here in the bay in Manila, yes, sir.
Q. What was she doing?
A. She was just here in port loading I suppose.
Q. Did you ever see the Nippon on Scarborough Reef?
A. Oh yes.
Q. When did you see her on Scarborough Reef?
A. I saw her on the Scarborough Reef on the 13th of May, 1913.
Q. How did you happen to be out there Mr. Taylor?
A. Well, sir, I will tell you, I am recognized as about the only expert in the Bureau of Navigation on the Lyle gun, this is a gun for life saving, I am about the only one down there with any experience in life saving, and I was down there when they were
137 making up this crew to go out and I volunteered to go out with the wrecking crew and take charge of the Lyle gun, I was working for the Bureau then, I had just quit down there and was going to see about another job, but I went out with this crew.
Q. How did you go out to the Nippon?
A. On the Mindoro, sir.
Q. For what purpose did the Mindoro go out to the Nippon on that day?
A. We went out there to save life, sir.
Q. Do you know who sent the Mindoro out there on that occasion when you went out there with her?
A. Yes, sir, Captain Helm; I don't know but at least I supposed it was by Captain Helm's orders.
Q. Who was in command of the Mindoro then?
A. Captain Anderson.
Q. About what time did you get out there to Scarborough Reef where the Nippon was on that occasion?
A. I think, sir, about between twelve and one o'clock of the 13th.
Q. Did you go aboard the Nippon at that time?
A. Yes, sir.
Q. Were there any members of the crew on board the Nippon at that time?
A. No, sir.
Q. How did they get off, if you know?
A. They took the only boat they had on the Nippon, the only life boat there was left, they took this boat and put her afloat, launched her, and put all their goods and chattels they could
138 possible carry in her and put them on board the Manchuria, she was lying off about four miles from the reef when we got there, the men were on the Manchuria.

Q. Then these men from the Nippon were all on board the Manchuria when you reached there?

A. Yes, sir.

Q. Was any communication held between the Mindoro and the people on board the Manchuria?

A. Yes, sir.

Q. How close did you approach the Manchuria on that occasion?

A. Within about thirty feet.

Q. Who on board the Manchuria addressed the people on the Mindoro?

A. The Captain, sir.

Q. Well, was the conversation between the Captain of the Manchuria and the Captain of the Mindoro in relation to the Nippon and her crew?

A. Yes, sir.

Q. What was stated?

Mr. Rohde: I don't think what the Captain of the Manchuria stated to the Captain of the Mindoro has anything to do with this case.

Mr. Fisher: The purpose is on account of the fact that the Captain of the Nippon was standing right alongside the Captain of the Manchuria and the fact of the matter is the Captain of the Manchuria was merely acting as the mouthpiece for the Captain of the Nippon.

139 The Court: You may proceed and if it is connected it may stand, but if it is not properly connected it will have no weight whatever.

A. As nearly as I can remember, what I heard the Captain of the Manchuria saying is, "the Nippon is badly ashore," he says; "you can go aboard her if you like," and then I didn't pay any more attention to anything they said; when I heard that I went aft of the vessel and I was satisfied then that the vessel, the Nippon, was a total wreck as far as the Captain of the Manchuria thought.

Q. Where did the Mindoro go after holding this conversation with the Captain of the Manchuria?

A. We went on to Scarborough Reef.

Q. And did you go aboard of the Nippon?

A. Yes, sir.

Q. Did you personally go aboard?

A. Yes, sir.

Q. What was the condition you observed at that time?

A. We did not have much time to look things over; we took the hatch off and saw that the holds were full of water and she looked pretty bad then, and then we went to Santa Cruz Zambales; Captain Anderson got a message, a wireless, off the Manchuria to go over to Santa Cruz and pick up the eleven men who were there, off the Nippon.

Q. These eleven men at Santa Cruz were sailors off the Nippon?

A. Yes, sir.

Q. And you left the Nippon then and went to Santa Cruz?

A. Yes, sir.

140 Q. And from Santa Cruz you went back to Manila with these men on board?

A. Yes, sir.

Q. What time did you arrive here then?

A. About four o'clock in the afternoon.

Q. On the 14th?

A. On the 14th, yes, sir.

Q. When did you ne:.t see the Nippon?

A. I saw her next on the 15th in the morning, I should say about ten o'clock in the forenoon of the 15th, I believe, sir.

Q. How did you happen to be out there again?

A. I went out there for Erlanger & Galinger; I was sent out there by them to take charge of the boat.

Q. How did you go out to the Nippon?

A. I went out on the Mindoro, sir.

Q. Who went out there?

A. Myself and four men, four natives, and a boat.

Q. For what purpose did you go out there, Mr. Taylor?

A. I went out there with the full purpose of salving the boat and the cargo.

Q. In whose employ was you at the time you went out to the Nippon for Messrs. Erlanger & Galinger?

A. I was not employed at that time; I had been intending to go down to Iloilo to see about some work down there and then I did not go down there and then when this wreck came up I went out there for Erlanger & Galinger.

Q. After you got out there with those four men or five men, what did you do?

141 A. We did nothing at all, just kept charge of the ship until they could send some more men and equipment out there.

Q. What became of the vessel which took you out there?

A. She returned to Manila.

Q. When did she return to Manila?

A. On the 18th, she returned from Manila on the 18th; she just left us on the boat and came right back to Manila and then came back again on the 18th.

Q. What did she bring with her on this second trip?

A. She brought stevedoring equipment and the supplies, sacks, baskets, shovels, everything belonging to the stevedoring business, mostly shovels, baskets and sacks.

Q. Did you take charge of the men who were brought out there?

A. Yes, sir.

Q. How many came out on the first trip?

A. The first batch I think thirty-five; they came out in a hurry and I think there were only thirty-five, sir.

Q. It was on the 18th I think you said when those first men got out there?

A. Yes, sir.

Q. Saturday, the 18th of May, 1913?

A. Yes, sir.

Q. What did you do with a view to the salving of the vessel and her cargo?

A. I proceeded to salve the cargo.

Q. Please state, Mr. Taylor, what methods you adopted in the matter of the salving of the cargo with the men and supplies placed at your disposal by Messrs. Erlanger & Galinger?

142 A. I applied the usual methods of stevedoring, resacking the dry copra and getting it out of the holds.

Q. What disposition did you make of this copra which you sacked as you say?

A. I took it up on deck and then put it on board the Mindoro, which was alongside; at that time I was using the Mindoro's steam to get the sacks on the Mindoro.

Q. Wasn't a part of the copra which was in the hold of the Nippon in sacks?

A. Yes, sir.

Q. Where was that sacked copra which was on board the Nippon, on the top or on the bottom?

A. It was on the top, sir.

Q. Was that the first copra sent in here to Manila?

A. Yes, sir.

Q. Did the first ship load of copra sent from Scarborough Reef to Manila contain anything but this copra which was stowed in sacks?

A. Oh, yes, sir; some of it was copra that we resacked; you see, I couldn't work all my men in one hatch, so I worked them on the other hatch.

Q. Did you make any examination of the vessel to see what condition she was in, that is, her hull?

A. Yes, sir.

Q. Please state what you saw, what if any damage had she sustained?

A. Her deck in the first place was up six inches out of the normal and the ship was choke-full of water from the stem to the stern.

143 Q. How much water was there in the holds?

A. At normal tide there was about fifteen feet of water, at high water about twenty-two feet, there was about five or six feet of a raise.

Q. Can you give us some idea of the dimensions of that steamer Mr. Taylor, the Nippon?

A. Approximately she was about four hundred feet long and she was about fifty foot beam with thirty foot draft normal.

Q. And the tonnage approximately?

A. About 7200 dead weight, she was built of steel plates riveted together, and some of these plates the bolts were broken off and the plates sprung apart.

Q. Did the water rise and fall in the hold of the vessel with the rise and fall of the tide?

A. Yes, sir.

Q. When you got out there to the Nippon did you find the hatch open or closed?

A. All closed, sir.

Q. How was the sea at that time?

A. Comparatively smooth, of course out there you always get a big swell, but it was pretty smooth.

Q. Did you notice any movement on the vessel on the first night you were out there?

A. Oh yes, the first night on board she was rolling very much, the sea was washing on board part of the time, there was a pretty big swell on at that time and she was rolling pretty bad that first night.

Q. What effect did that seem to have on the vessel?

A. You could *here* her grinding all the time where she was
144 resting on the rocks, you could h*ere* her grinding plate against plate, rivet against rivet, all the time, grinding, grinding.

Q. How many different holds was the vessel divided into?

A. She had number one and number two and a boby hatch and number three and number four and another boby hatch.

Q. That would be six holds in all?

A. Yes, that is if you call the booby hatch, the coal hatch a hold, yes, sir.

Q. How many of these holds and which of them were used for the storage of the copra?

A. No. 1, No. 3, and No. 4, I think sir.

Q. Were there any water-tight compartments in the vessel dividing the different holds?

A. Yes, sir, absolutely.

Q. State whether the condition of the vessel and the condition of these various holds and compartments was such that the water could run from one portion of the vessel to the other?

A. Yes, sir, from No. 3 hold to No. 4 hold it did, yes, sir.

Q. State please, Mr. Taylor, the position of the vessel on the reef?

A. The vessel was lying on the reef due east and west, on a grid iron you might call it, that's what it looked like, just like on a grid iron, this coral reef that sticks up there, she was practically due east and west with a slight list to starboard of about three degrees, and she was lying as quiet as could be, the sea was very smooth, no winds at all, that was the trouble, we didn't get any wind,
145 she was perfectly smooth with the exception of that heavy swell that you always get around there, the big northeast swell.

Q. About how many points of contact were there between the reef and the bottom of the ship, if you observed at how many points she was touching?

A. She was resting on five ridges, the main place there was a hollow in the bottom of the vessel and one point of the reef was in that hollow place in her bottom, the bottom of the vessel was caved in, that was why it was so hard to get her off, you couldn't pull her off on account of this piece of the reef sticking up in there (witness makes various explanations with his hands to show the position in which the vessel was resting upon the reef).

Q. How far away from the place where this vessel was resting was there water of sufficient depth to submerge her entirely?

A. If she had gone off the reef about fifty feet I should judge.

Q. Was the declivity to the point where the water was deep steep or gradual?

A. Very steep.

Q. It ran down rapidly to the deep water?

A. Yes, sir.

Q. Please state what you did after you got this sacked copra out?

Q. We put it on board the Mindoro and shipped it to Manila.

Q. What did you do then?

146 A. I resacked it if I possibly could resack it and passed it out on deck to send in here to Manila, and in case it was damp we passed it up on deck and laid it out on the deck in the sun to try and dry it out a little first.

Q. About how thick was the layer of dry copra about the point where the wet copra began?

A. The No. 3 and No. 4 holds were I should say from the deck to the keelson would be about twenty feet and they there would be about fifteen feet always wet, then there would be say three feet of a strata partly wet, and then on top of that would be all dry copra.

Q. And how thick would that strata of dry copra be?

A. Three feet, probably two feet and one-half I should say, about that.

Q. Did you have men working in the No. 1, 3, and 4 holds at the same time getting out the dry copra?

A. No, sir, I never touched the No. 4 hold until the last, we couldn't work that very well till we got out the other.

Q. Did you have any difficulty in keeping the men out there on the work?

A. That was the whole thing out there I should say, the whole trouble out there. The men couldn't work down there and wouldn't work, they would go down in the hold and stay a little while and they would complain that they got the headache and their eyes would get sore and their legs itch, that was the whole thing, if you could get the men it wouldn't be so much of a job.

Q. About how long a time would each shift stay below decks?

A. One hour, an hour and a half, some of them stayed two

147 hours at the most, it was too terrific, they couldn't stand it and the gas was tremendous.

Q. Was this condition as bad while you were working on the dry copra as when you got through the dry copra and into that which was wet?

A. Not quite so bad, but of course the tremendous heat and the gases were there just the same, you couldn't stand it down there, the fumes were horrible.

Q. Did you notice anything abnormal in regard to the temperature down there?

A. Yes, it was over one hundred degrees.

Q. At what time of the day?

A. All the time, this heat and fumes were coming from the copra

all the time, the heat in the hold was terrific all the time, you simply couldn't stand it.

Q. Please state, Mr. Taylor, from your own observation what was the effect of this heat and these fumes or gases from the copra upon the men?

A. It turned the men sick in the stomach and their eyes would begin to run, we tried to tell the men not to wipe there eyes but they couldn't keep from it and the result was in a few minutes, in half an hour or an hour they would be absolutely blind, and then they got sores on their bodies and on the legs and their faces would swell up, that was the whole trouble, the men couldn't stand it to work in there.

Q. Did you suffer at all on account of the heat and the fumes from the copra?

148 A. I did, yes, sir, I wa- sick at the stomach and my eyes were bad, you would get the fumes from the stuff and your eyes would begin to run and you would have to rub them. I was using boric acid on my eyes all the time and when I didn't have the boric acid I used cold tea.

Q. Please state whether any of the men were asphyxiated or became unconscious while working in the holds there?

A. Yes, sir, one or two.

Q. Did these men seem to have anything the matter with them after working in the holds on this copra?

A. Yes, sir, most of them got swollen testicles, there legs were all inflamed and burned with this copra, the acid from the copra, they would get the headache and the stomach ache and their eyes would run, it was tremendous the heat and the fumes down in there.

Q. About how long on the average would each man stay out there at the ship?

A. One trip, they would go out today and then come back on the same boat, some of the men you couldn't get to go down in the hold more than once, and of course when a man was sick you couldn't make him do it.

Q. What inducements did you make these men to keep them out there on the ship?

A. All kinds of inducements, anything I had on the ship, I gave them five meals a day; they had the ship's stores to take anything they wanted, they had all my stores anything they wanted, I even gave them wine to drink; we were offering them anything we had to keep them out there.

Q. Did you have any medicine on board the boat?

149 A. Yes, sir, but it was printed in Swedish on the cases and we was afraid to tackle it.

Q. But you could drink the wine without being able to read Swedish. Did Messrs. Erlanger & Galinger furnish you with any supplies and medicines?

A. Yes, sir, and they sent a doctor out from the Bureau of Navigation with all kinds of supplies and medicines, and that was surely a godsend for us too.

Q. Besides these shovels and baskets and sacks that you have

mentioned did you have anything else in the way of equipment out there for getting the copra out of the holds?

A. Oh yes, we had three clam shell baskets out there, clam shells, you know what they are, a sort of a steam dredge.

Q. Did you have any pumps out there?

A. Oh yes, we had plenty of pumps.

Q. How did you operate those pumps?

A. Set them up on the ship and attached them, that — all, we got up steam on one of the engines there on the Nippon and the others we had to use steam from the other boats.

Q. Did you have any gasoline driven engines?

A. Yes, sir, two of them.

Q. Were you able to operate the boilers on board the Nippon to make steam for these pumps?

A. Yes, in the two of them, in the donkey engine boilers, we used them to pump out with.

Q. Were you able to get up steam in the boilers of the Nippon from the time you first went out there?

A. No, not for quite a long time, sir, we had a good deal of work before we could get them to working.

150 Q. After you got this dry layer or strata of copra skimmed off the top what method did you adopt to get the copra out of the holds?

A. I used platforms, I built platforms out of planks, twelve inch planks by about thirty to forty feet long, just let a platform down on top of it and then the men, one or two men could work off the platform and reach the copra and we got out all we could of it that way, it was a little slow this way because there couldn't many of the men work on it at a time.

Q. And was this copra all brought out of the holds in that way and sacked?

A. It was not all sacked but most of it was sacked, yes, sir.

Q. Did you have the timber on board the vessel to make these platforms you speak of?

A. No, sir, the timber all came out from Manila, there was no timber at all on the ship.

Q. Did you devote your personal attention to the removing of the cargo or to the preparing of the vessel and repairing her with a view to floating it off the reef?

A. I put all my attention to the cargo, absolutely.

Q. Who carried on the other operations with a view to salving the vessel itself?

Q. There was nothing done towards the salving of the vessel until we had most of the dry cargo out of it, we were working to save the cargo.

Q. Why was that done?

A. We wished to save all the cargo we possibly could and I saw a chance to save the cargo as well as the ship and we were

151 putting all our attention to that first.

Q. Was it possible to salve the vessel without getting the cargo out first?

A. No, no, that is impossible, you couldn't do it, you got to get the cargo off first before you could float her.

Q. Why couldn't you patch it up from the outside and float it off the reef?

A. How are you going to get it off the reef?

Q. That is what I am asking you, couldn't the vessel have been patched up from the outside and the water pumped out and then drag her off the reef?

A. Oh no, the vessel was just picked up on a heavy roller, a heavy swell and put right up on there, picked right up and came down on three bo-lders, and there she was resting on those three big bo-lders or mounds on the reef, whatever you want to call them and you couldn't drag her off, Judge, you would tear her all to pieces that way, she had to be lifted up off this place where she was resting, there was one part of the reef where it had jammed in the bottom of the ship so that there was a hollow place there (illustrating by the palm of his hand with the fingers slightly bent downwards). That meant we had to discharge all of the cargo and the coal as well and even then we had to wait for the high water in the early part of July and the latter part of June—every year we have the high tides here about that time of the year—you couldn't get her off any other way because as I said she was fast down there on the bottom, this one place in the bottom was bent in about five feet
152 from the normal, that is five feet up you understand, bent in five feet up from the keel, you had to float her off absolutely, sir, you had to lift her up, you couldn't drag her off.

Q. Did you get all the copra out of the vessel?

A. We got out all we could, we kept going, sir, until the people here in Manila said don't bring any more of that in here or we will all have the cholera or something in the town, and then we jettisoned the rest of it.

Q. You took all the copra out you say?

A. Yes, sir.

Q. Now how much of the next layer or strata of copra did you get out, Mr. Taylor?

A. I don't know how many tons, I wasn't keeping track of that I was busy getting it out.

Q. I don't mean tons, but to what depth did you succeed in getting it out?

A. Two feet and a half I should say, about that; we kept getting it out until it commenced to get rotten, when the mush commenced to come up through we had to stop.

Q. And you got that stuff out by building platforms?

A. Yes, sir, we hauled it out of there and put it on the deck and in the big scow alongside.

Q. Was that dried in any way, was any part of it dry?

A. Half of it would be some part of it dry, you understand this would be probably thirty per cent copra and the other, probably eighty per cent deteriorated second strata and third strata, this third strata was just a sort of a mush.

Q. Couldn't you have used the clam shells or orange peels on this lot of copra?

153 A. The reason I didn't use these clam shell buckets was that those buckets weigh half a ton you are aware, and you have got to lower that bucket in a heap because you got to do that to pick up the stuff with it and you see it would go right straight down and strike the bottom, these buckets work on two wires, one of the wires to hold her slack on and the other one when you have your bucket filled up, when it is low-ed down it is opened out and you got to let it go right straight down and then when she is filled up you haul taut on the wire and raise away, but you understand when you let go it goes on the run. I didn't want to start this because in the first place it would break up all this strata where there was some good copra, you couldn't help that because it would go right down through the whole thing, and I saw my way clear as a stevedore and as a man working a cargo that by handling it in baskets I could save the cargo and that's what I was out there to do if I could do it.

Q. But you did use these buckets, as you call them, in the end to take out this mashed stuff?

A. Oh yes, we used it for that, we threw that stuff overboard.

Q. Now state, Mr. Taylor, if it would not have been possible for you to put on a pump or pumps, big sand suckers as they are called, and get this rotten copra out much more rapidly?

A. No, sir, we tried that and it wouldn't work, we could — make it work.

Q. Why wouldn't it work?

154 A. On account of the donnage, it got into the pumps and stopped them up, at first that was all you could hear was the pumps, pumps all the time and we tried these pumps and the donnage would jam up into it and it would stop, it would work for about two minutes and then stop, the valve was right within two feet of the bottom of the hold, the ship's floor and these sacks of course the force of the air pulled them right up into the pump and when these were sucked into the valve she would stop; you couldn't do it; these pumps would work for the donnage.

Q. What is this donnage you speak of?

A. Donnage, all cargo is donnaged, you got to put this donnage on the bottom of the hold and all around the walls and any place where there is any iron you got to thoroughly donnage so the copra don't come in contact with it, you got to put donnage in a ship on account of the cargo, mats or bags.

Q. What is the matting or bags you speak of?

A. Any kind of matting, these common bayones, the kind of matting they use on hemp, gunny bags.

Q. Matting made of palm leaf?

A. Just a sugar bag cut open and made square, or a gunny sack, any kind of matting.

Q. How long did you try that pump?

A. Probably ten or fifteen days, all the time whenever we thought we would do any good with the pumps we tried pumping. I had one

of the best engineers in this country at the pump and he couldn't make it work.

Q. Who was that?

A. Mr. Flor.

155 Q. This big pump ran by steam or by gasoline?

A. Gasoline, sir.

Q. How long a time did it take you, Mr. Taylor, to get all the copra off the vessel which you succeeded in salving and sending ashore?

A. A long time, sir, I should say thirty days I think. The whole thing you understand, sir, was the delay of the men if the men would have worked it was only a job of a few days to get the cargo out of the ship, but the way it was out there the men worked all right as long as they could but they couldn't stand it, sir, they would go down in the hold for an hour or an hour and a half and they maybe would have to be lead on board and when they would get up there on board they would be holding their testicles and their eyes would be running and they would be blind, and I couldn't force the men to go down there again, they couldn't stand it, what could I do? that is the whole thing, I couldn't use brute force against the men, I couldn't drive them back down there, if a man's sick he's sick.

Q. How was the copra loaded from the Nippon onto the vessels which brought it to Manila?

A. It was carried to most of the vessels in a large scow we had alongside there; this scow is about eighty-four feet long and a thirty foot beam; she was filled up alongside the Nippon and then taken alongside the Mindoro or the Viscaya or whatever boat we happened to be loading at that time.

Q. Were any of these vessels able to come alongside and

156 receive cargo alongside?

A. Oh yes, we had the Borongan alongside and the Mindoro.

Q. Why didn't you always do that, what was the occasion for using the scow?

A. The Vizcaya wouldn't come alongside, sometimes there would be a swell on and the Captain of the boat would be afraid to come alongside the reef.

Q. How often did you have a swell there?

A. There is a swell there most of the time, a very very long swell, sometimes it is not very strong but there is practically always a swell on there for a distance of one thousand or two thousand miles northeast you always get that swell.

Q. Is there any portion of the Scarborough Reef exposed at low tide?

A. Yes, several miles of it.

Q. Does it look like an islands, is there any vegetation of any kind on it or does it look like a rock sticking up out of the sea?

A. It is a shoal, just a coral shoal.

Q. Is this reef all submerged at high tide?

A. There are little bits of it about the size of your hand above

the water, you can just see it, at high tide there is hardly anything in sight there.

Q. The difficulty in working in the holds on the Nippon was on account of the gases?

A. The gases and the heat and the tremendous smell.

Q. Did you notice any bad effect on the water itself with which the copra had been in contact?

157 *Q.* What do you mean?

A. Necessarily the men working down there in the hold on these platforms getting out this wet copra would come in contact with the water in the holds, did this have any effect upon them.

A. It surely did, yes, sir, naturally the planks would surge down when the copra was pulled up, you see we had these planks resting on the top of the copra and this mush and water would come up through between the planks, after we got through the dry copra it was simply a bog, you know what a bog is, I have an idea what it is, you would sink right down into it, it was a regular mush.

Q. And did that water have any effect on the men working down there as far as you observed?

A. It certainly did sir, it burned the men's legs and their feet whenever they got it on them.

Q. Now Mr. Taylor please state whether or not you made any attempt to improve the condition in the holds by the use of wind sails or anything of that kind?

A. Yes, sir, yes, but unfortunately there was no wind, that is the worst part of the whole thing, if there had been any wind it would have been all right, but it was in the month of June and there was no wind at all, just calm all the time, that is what made it so bad in there.

Q. When did you take the hatches off?

A. The first thing in the morning.

Q. And did you leave them off?

A. They were off all day and we put them back again at night.

Q. Why was that done?

158 A. It is a common thing at sea, at sun down all the hatches are closed, it is a sort of a custom; I believe it is an order in some ports.

Q. When you first took the hatches off the vessel did you notice whether there was any bad odor emanating from the copra or not?

A. You could smell the odor a mile from the ship.

Q. Was any part of this dry strata of copra wet by you in handling it?

A. Oh there must have been quite a little of it, yes, sir.

Q. How did that happen?

A. It happened, you quite understand the whole thing at high water the middle layer got some of the water in it, the wash and the upper layer was of course just at the wash, naturally the men would get a shovel-full of wet and a shovel-full of dry when we got down into it a little, of course it was impossible to just skim what was dry off the top, the men had to get down in there on it and when they took it off the top some of it would sink down in naturally

and quite a good deal of the dry copra went in amongst the wet copra, you couldn't avoid that.

That is all.

Cross-examination by Mr. Rohde:

Q. When did you first receive the buckets, as you call them, there, the clams shells?

A. I don't recollect the date, sir.

Q. About?

A. About the 18th of June, no, it was in some part of June.

159 Q. About the middle of June?

A. I could not be sure about the date.

Q. Did you know whose they were?

A. Yes, sir.

Q. The Bureau of Navigation?

A. Yes, sir.

Q. They came from the Bureau of Navigation?

A. Yes, sir.

Q. And they have them down there yet? In the Bureau of Navigation?

A. Yes, sir.

Q. Do you know by what steamer they came out there to the Nippon?

A. Yes, sir, they came on the Vizcaya. No, I am not sure, sir, they may have come on the Mindoro, I would not like to say about that.

Q. You say that the Captain of the Vizcaya was afraid to come alongside the Nippon to load?

A. Yes, sir.

Q. Very much afraid?

A. Well, he didn't want to do it.

Q. How near did he approach to the Nippon?

A. He had stern lines on the ship and got as near as possible, as near as he would come.

Q. But he was very cautious?

A. Yes, he was cautious.

Q. All of these old Spanish Captains are very cautious about where they go with their vessels aren't they?

A. Yes, sir, but of course you couldn't tell them what to do,

160 I could tell them what to do, yes, but they wouldn't do it, they are running their own boat.

Q. They wouldn't come alongside the Nippon even if you told them to because their ships were thorough-y under their own command, the- were in full charge?

A. Yes sir, I suppose so, I suppose they were.

Q. Now you say that the buckets or orange peels would go clear to the bottom when you let them down?

A. Oh yes, they are bound to, sir.

Q. Well, they wouldn't have done that with the dry copra would they?

A. Yes, sir, you quite understand you can't gauge that in about two feet or so, you got to slack it down, when you let go you have to slack it down absolutely before it opens up; there is half a ton of weight that you just got to drop right straight down until you fetch up on the turn, you understand it works on two wires and when you are lowering away with your bucket when you let go of the slack you just drop your bucket and she goes right down out of sight.

Q. And do you mean to say that when you lowered your bucket it would sink right through the whole mass of the copra?

A. Oh yes, it was not deep enough and a whole lot of this copra would be just a sort of a mash, a soft much you could call it.

Q. That is to say that when you began to use the buckets there was not enough of the dry copra left on the top to serve the purpose so as to enable you to use them to advantage?

A. It wouldn't matter your bucket would go right down
161 through the copra.

Q. Was the dry copra not sufficiently compact to allow the people to walk upon it?

A. Not very well sir, just under the hatches at first you could yes, but just as soon as we got below the hatches we had to put those planks down there for the men.

Q. But at first did the laborers not stand right on the mass of copra and fill their sacks?

A. Yes, sir, and partly with the assistance of the twelve inch planks.

Q. Did you have to use the planks immediately, right from the very beginning?

A. After the sacks were out of the holds. You see there was several layers of sacks on top of the copra in the No. 3 and No. 4 holds and after these sacks were taken out then the trouble began, you see, Your Honor, Your Worship, as soon as we got these sacks off we would have to put the planks down there for the men to stand on.

Q. How much copra was there in the sacks?

A. Well, I should say there were several thousand sacks.

Q. And the Nippon is what is called a three decker?

A. Yes, sir, a three decker.

Q. And this copra was all in the lower part of the ship?

A. Yes, sir.

Q. On what you call the 'tween decks?

A. Yes, some of it, came up to there, but it was all below.

Q. And on the bridge deck?

A. Nothing on the bridge deck, sir, except general cargo and on the 'tween deck nothing.

162 Q. You went out to the Nippon when the Mindoro was sent out to look after her for the first time did you not Captain?

A. Yes, sir.

Q. And on your way back you brought back to Manila a part of the crew from Santa Cruz, Zambales?

8899

A. Yes, sir.
Q. And you got back to Manila on the evening of May 13th?
A. May 14th, sir.
Q. Did you get back on May 14th?
A. Yes, sir, May 14th.
Q. At what time?
A. Between four and five o'clock, probably four o'clock, as near as I can get to it, in the afternoon.
Q. And what time did the Mindoro leave again to take you out to the Nippon?
A. At half-past five or a quarter to six, about that I couldn't give the exact minute.
Q. How long did she remain here in Manila that time?
A. She was here probably an hour and a half or two hours, probably about an hour and three-quarters.
Q. With whom did you speak about going back out to the Nippon for Messrs. Erlanger & Galinger?
A. Mr. Reis.
Q. Did you see Mr. Erlanger at all?
A. No, sir, I didn't know him at all, I wouldn't have known him if I had seen him.
Q. You wouldn't know him now if you saw him would you?
A. Oh yes, now I would, I have seen him up in the store.
Q. Where did you see Mr. Reis that evening upon your
163 return to Manila from the first trip to the Nippon?
A. I didn't see him, I got him on the phone.
Q. Where were you when you got him on the phone?
A. Engineer Island.
Q. You were on Engineer Island and he got you on the phone?
A. Yes, sir.
Q. How many men did you take with you on that trip out to the Nippon?
A. The first trip out?
Q. No, the second trip out when you went out to take charge for Erlanger & Galinger?
A. Four men and a life boat.
Q. Four Filipinos and a life boat?
A. Yes, sir.
Q. Did you take any other means with you for the purpose of salving the vessel or her cargo?
A. No, sir, we just went out there to take charge until they would get supplies out there, some supplies and the four men.
Q. There were provisions on board the Nippon weren't there?
A. Of course I knew there were provisions out there, some things, I had been out there before.
Q. How long were you out on board the Nippon with these four men?
A. From one o'clock on the 15th, p. m., till the arrival of the Mindoro on the 18th in the afternoon, I don't just remember the hour when the Mindoro got there, sir.

Q. The first means of salving anything, either the ship or her cargo, came out by the Mindoro on her third trip?

164 A. On her third trip, yes, sir.

Q. The second trip out there they just left you and the four men on the Nippon with a life boat?

A. With a life boat, yes, sir.

Q. What did the Mindoro bring out on the 18th?

A. She br*ung* out a stevedore's gang, quite a lot of baskets, shovels, and sacks, quite a lot of things, sir, for the salvage, for the working of the cargo and she brought out supplies, beef and ice.

Q. Were there not many provisions on board the ship?

A. Oh yes, sir, there were provisions on there.

Q. But not sufficient for the subsistence of the men and yourself?

A. We couldn't subsist on nothing but salt pork, that is I could, yes, but the men didn't care for it, they couldn't do it, of course I am a seafaring man and a sailor can live on most any old thing.

Q. Have you ever had any experience in the salvage or wrecking of vessels?

A. Yes, sir.

Q. Where?

A. I have been working on salvage work in Puget Sound with Tom Lake.

Q. What years?

A. In 1882, sir; I was likewise in Japan in the salvage work with George Todd. On the Nippon there was not so much work to be done on her if you could get the men and get at her to do it. Then I helped to successfully raise the Willamette at that time.

165 Q. What part of the Sound was that?

A. Cape Flattery.

Q. What was the result, was the Willamette saved?

A. Yes, sir, she ran ashore on Cape Flattery and she was successfully saved. I likewise had the pleasure of floating the Mindoro on the 16th day of January last year off the Animosa Reef when she went ashore there.

Q. When did Mr. Flor come out to the Nippon?

A. Mr. Flor came out to the Nippon on the 26th day of May on the Vizcaya, but I am not so sure of the dates, my memory is not so good as it was sixty years ago, I was not keeping any count of the dates I was putting all my attention to getting out the cargo.

Q. And Mr. Handysides?

A. About the same time; I am not quite sure about the dates, you see, Your Honor, I had my mind concentrated on this cargo business, I could not be sure about the dates.

Q. How long were you the only white man on the Nippon?

A. From the 15th until the 30th.

Q. From the 15th to the 30th of May?

A. No, no, sir, the Vizcaya arrived on the 18th with Captain Hilgrove and Mr. Helvering.

Q. When you went out to the Nippon on the second trip did you

have any agreement or contract with Messrs. Erlanger & Galinger or Mr. Reis?

A. Just a verbal agreement.

Q. What was it?

A. That I would be paid handsomely if I saved the cargo, and I knew Mr. Reis for a long time, I worked with him several
166 times before. He said I would be paid handsomely and that was enough for me.

Q. What instructions did you have when you went out there with these four men?

A. He says Ben, save that ship and cargo, if you save that cargo it is a feather in your hat and I says I shall do it with all the ability possible, I was out there to save that ship if it could be done.

Q. And you went out there with four men to save her?

A. To take charge of her, sir.

Q. Did you tell them what stuff to send out there?

A. I didn't tell them anything, Mr. Reis knows just as well as I do what stuff we would want to save the cargo and the ship the only thing I did when they left me on the Reef I gave Mr. Anderson some instructions for things I wanted, some things they might forget about it.

Q. As a matter of fact your going out there with the four men was somewhat in the nature of staking a claim?

A. If you put it down in a nautical phrase I can understand it, but I am a seafaring man, I am not a miner.

Q. You never staked a claim?

A. No, sir.

Q. And I never went to sea.

A. Well, that's the difference.

That is all.

Witness excused.

Mr. ANDERSON, a witness called by the plaintiff, being first duly sworn in open court, testified as follows:

167 Direct examination by Mr. Fisher:

Q. Please state your name, occupation, and residence.

A. George Anderson, master mariner, Manila.

Q. You are a master mariner are you not?

A. Yes, sir.

Q. How long have you been a master mariner?

A. Since the 28th of February, 1905.

Q. But you have been going to sea for a much longer period have you not?

A. Yes, sir, about nineteen years.

Q. How long have you been in Philippine waters?

A. Since the 28th of August, 1905.

Q. You were in command of the SS. "Mindoro" in May, 1913 were you not?

A. Yes, sir.

Q. You had occasion to go out to the place where the SS. "Nippon" was stranded on Scarborough Reef in May, 1913?

A. Yes, sir.

Q. Please state how you happened to go out there to the Nippon on that occasion?

A. I received instructions from the Director on the 12th to proceed immediately, as soon as I could get supplies and coal and water on board, to the place where the "Nippon" was at Scarborough Reef and stand by to render any assistance in the saving of life or of cargo that I could if there was anyone on the ship to take them off if possible.

Q. Word had been received in Manila that the Nippon was strand- there?

168 —. ——.

Q. And you went out there to the Nippone with the Mindoro?

A. Yes, sir.

Q. Did you find any of the officers or crew on that vessel when you got there?

A. No, sir.

Q. What had become of them, if you know?

A. They had all gone aboard the Manchuria in the life boat, all that were left on board, the Manchuria *was* there just ahead of us.

Q. State what occur-ed.

A. The Manchuria hoisted signals for me to come alongside—at first I was going alongside the Nippon as the Manchuria lay about two miles off from the place where the Nippon was on the reef and when we were off about half a mile from the Nippon they hoisted signals on the Manchuria for me to come alongside so I pulled over alongside the Manchuria.

Q. Did you see the Captain of the Nippon on board the Manchuria?

A. I conversed with the Captain of the Manchuria as he was standing on the bridge; I could not swear that I saw the Captain of the Nippon on the Manchuria then or not.

Q. Have you ever seen him since?

A. I have seen him on two occasions, on three occasions since then.

Q. Did any conversation take place between yourself and the Captain of the Manchuria?

A. Yes, sir.

Q. How was that conversation carried on?

169 A. First the Captain of the Manchuria reported to me that the crew of the Nippon was all on board the Manchuria, and furthermore he reported he had had a wireless from Director Helm in Manila for me to proceed to Santa Cruz and bring the life boat and crew that had gone ashore there in to Manila.

Q. You did that did you Captain, you went down to Santa Cruz and picked up these men?

A. I first, after receiving these orders to proceed to Santa Cruz,

I commenced to ask him a few questions regarding the Nippon, how badly she was ashore and so on, and the Captain told me she was very badly ashore and half full of water, from what he said to me he thought she was badly wrecked.

Q. Did you go aboard the Nippon at that time?

A. Afterwards, I asked the Captain of the Manchuria if it was possible to go aboard the Nippon and he said yes and that there was a lot of baggage left on board and asked me if I could take off this baggage, and I said, "yes, I will go on board and look her over and bring this baggage into Manila." Then I proceeded to go aboard the Nippon and proceeded to take off this baggage that the Captain told me about and then we left for Santa Cruz.

Q. When did you next go out to Scarborough Reef where the Nippon was if at all?

A. I arrived in Manila, after picking up the crew and officers in Santa Cruz, I arrived in Manila about three forty-five or three forty p. m., I don't know the exact minute I would have to look the log book over to see that, and at five forty-five I received in-
170 structions to proceed out to Scarborough Reef for Erlanger & Galinger and leave Mr. Taylor on board, taking enough provisions and enough water to last for a few days until they could send out supplies and machinery and equipment necessary for the salving of the vessel and the machinery.

Q. At that time, when you made the second trip out there, the Mindoro was under charter to Messrs. Erlanger & Galinger?

A. I was made to understand I was on a charter to Erlanger & Galinger, yes, sir.

Q. And you went out there again after this?

A. I left that evening shortly after six o'clock, at five forty-five I received the order and I left just shortly after that and arrived the next day at one o'clock alongside the Nippon and left Mr. Taylor and four Filipinos and a life boat at the Nippon. I arrived here again in the forenoon of the 16th at about nine a. m.

Q. Then what did you do?

A. When I arrived in the Bay Mr. Erlanger came aboard, Mr. Simon Erlanger came aboard and told me to go and coal up and proceed out the same afternoon to the Nippon again, he said he had dispatched the steamer Vizcaya in the morning but the Vizcaya was a slow steamer and I would probably be able to get out there just as soon as the Vizcaya or ahead of her and I took some men aboard, thirty-seven or thirty-eight I think and I left again that same afternoon at three forty for the S. S. "Nippon."

Q. Did you take anything out besides men?

A. I took some sacks and shovels and baskets, I was made
171 to understand all the rest of the supplies and materials were on the Vizcaya. I also took on board twenty cases of salmon, twenty cases of rice, and half a ton of ice.

Q. Did you get out there before the Vizcaya?

A. I went alongside the Nippon the next day, the 17th, at twelve forty-five p. m. and immediately commenced to rig up gears to

start to get the cargo off the vessel, and we started to take it off that same day.

Q. Did you succeed in getting off any of the copra that day?

A. We got off 675 sacks I think, we kept working until the sea finally got so rough I have to leave and when I left the Nippon about six o'clock in the afternoon the Vizcaya was just coming into soundings.

Q. Did you remain there that night?

A. That night, being so rough, I pulled out from alongside the Nippon and hove to.

Q. Did the weather abate the next morning?

A. It was not blowing but the swell was so strong that we didn't dare lay alongside the Nippon for fear of being carried up on the reef, but we started to work the cargo, we had to bring the lighter in-shore of the Nippon and load her, bring the stuff off in boats then we had to work the stuff around to the lee side of the Mindoro and load from the lee side, by doing so, by loading it from the lee side of the Nippon we managed to finish loading that day, all dry copra, and left that night for my first trip to Manila with copra. I left that night at about eight o'clock and arrived here the next day about three or four o'clock.

172 Q. Did the Vizcaya remain out there?

A. The Vizcaya remained out there with the gear and supplies but all day Sunday it was impossible for the Vizcaya to load, the sea was too heavy. The Vizcaya had a lot of machinery on board that had to be brought off in the boats, she couldn't lay alongside the Nippon, you could load copra and handle it in the small boats all right but you couldn't handle this heavy machinery in the small boats. She lost a day there on account of the heavy sea when if it had been a fine day she should have unloaded.

Q. Then you went back again to the Nippon for another load?

A. Yes, sir, I got here on the 19th and left on the 20th for another load, I got out there on the 21st and finished loading on the 22d and got back here on the 23d; left again on the 24th and got out there on the 24th; left there on the 26th and got back in here on the 27th, no on the 26th, I could not be just positive about those dates, but it all shows on the log book, we left there on the 27th when I was finally taken off the Mindoro after being requested by Erlanger & Galinger to take over the work on the Nippon, but I made three trips and brought in three loads before I finally left the Government service, before I finally took my leave and went to work for Erlanger & Galinger out there.

Q. Do you remember when you went out there?

A. I think I quit the Government the 27th.

Q. What were you supposed to do out there, Captain?

A. Take charge of the operations.

173 Q. What was being done when you got out there?

A. Well, the conditions were that there was not much done, it was rather discouraging, the people coul-n't work, or wouldn't work in the holds.

Q. Why wouldn't they work?

A. The men would go down there, even when they were working in the dry copra—it was practically all dry copra in the hatches and even back under the hatches for quite a ways and we were working on that at first—they would be down there for an hour or so and would come up with their eyes running and practically blind and their testicles swollen and make a run for the salt water, and after we got down to the second strata, the half dry copra it was even worse, the men would get this water from the copra on them and they couldn't stand it.

Q. What did you do to keep the men out there, if anything?

A. When I went out there I brought 120 men with me I think.

Q. And did they as a matter of fact come back to Manila?

A. There were only about twenty-seven of them that didn't come back and it left only about thirty or fourty men with the divers.

Q. What methods did you use, Captain, for moving the cargo after you went out there and took charge?

A. Every method that could possibly be applied, we tried to use all the men we could get all the time, we had the men working in shifts and working in all three holds at the same time, we used a big lighter to load the copra into from No. 3 and No. 4 holds and the other we stowed on deck so it could dry out a little, we did this
174 so we could keep three gangs working at one time without one man ever being in the road of another. I also had so many men tolled off for relief force so that as soon as a man got so sick down there he couldn't stand it and came up and jumped overboard for the salt water there would be another one ready to go down there and take his place. We did everything we possibly could with the men we had to keep the thing going.

Q. Were you able to work at night at all?

A. We worked at night after we got down to the second strata if it was high water in the day time; we couldn't work it at all in high water after we got down to this second strata and we were trying to save as much of this half dry copra as we could.

Q. The method employed by you in getting the copra out of the holds was to shovel it into baskets and then raise the baskets to the deck?

A. Yes, we put it in baskets and then brought it up on the deck or dumped it in the big lighter alongside to give it a chance to dry a little and then it was sacked, some of it on the deck and some in the big lighter.

Q. How were the baskets raised out of the holds?

A. By steam.

Q. Where did you get your steam?

A. We had three boilers out there, I brought out two boilers and there was one out there we used.

Q. What sort of water did you use in the boilers?

A. We had to use salt water, we couldn't get the necessary fresh water and we had to use salt water and the engineers had
175 quite a lot of trouble, they had to watch them all the time.

Q. What is the effect of using salt water in a boiler?

A. Well, I am not an expert on that, I wouldn't care to give any

statement about that, but everybody knows that if you don't have a certain amount of compound in it you are going to burn your boiler out.

Q. Did any of those boilers burn up as a matter of fact?

A. Yes, one burned up on us, the crown sheets came down, the largest one we had out there too, it was quite a calamity, caused us a lot of trouble.

Q. How long were you engaged in this work of removing the copra of the second strata?

A. We were engaged on that about nine days, but during that time we had to have the men standing on platforms, plank platforms, and one day one of the men happened to slip off the platform and I just got him in time, I happened to be right there and I just grabbed him by the hair in time and pulled him out and then we had to stop even with the platforms and could only work at low water. Then after we got about so much of this second strata out it was impossible to get any more the men couldn't stand it down in there, they would go down and stay a little while and they would come up with their eyes swollen so that they were blind, their skin all broken out and their testicles swollen up and if one of them had slipped off the platform he would have died on the spot, they would get so sick we were afraid they would get unconscious and fall off.

Of course we put life lines on those in the most dangerous
176 positions, but that was only in the day time, we couldn't send the men down in their to work at night, and back under the wings after it got down a little ways we were afraid to send them in there for fear they would fall off and be dead before we could get them out. You would have to have some good insurance policies first if you want to send them in there.

Q. How soon did you notice the evil effect of the gases?

A. Why it was there from the first, it got more severe every day but it was there the first time I boarded her.

Q. Did it effect you at all? ?

A. It sure did.

Q. What did you notice yourself?

A. I noticed, I went down in No. 2 one day where there were some things I wanted to see about and there was no copra in there and my eyes got so bad—I was only down there for about an hour—I had to be led up on deck. I got a drop of the water in my eye and rubbed it a little and my eye swelled up so I couldn't see a thing.

Q. Please state, Captain, whether there was any appliance or means for the salving of the cargo of the Nippon and the vessel itself which would have accelerated your work on the same which could have been obtained for the work out there which you did not use?

A. I hardly think there is any appliance in Manila that we could get that would have accelerated the work, I don't know of any. I deny any man to prove to me that the work could have been done any faster than it was done under the existing circumstances; they might have done it just as fast but I would have to see that.

177 Q. What do you think about the idea of putting clam shells to work taking out the copra from the very first?

A. You would have got a few good loads out right at the first and the rest you would have mashed up in the hatchway, and after you got down in the hatchway your clam shell would work right down into the wet copra and the rest of it would stay up around the sides, it would be just like a funnel. You can't swing your clam shells over to one side and you would have to trim the copra down from the sides to get a load.

Q. By trimming you mean that you would have to send men down in the holds with shovels to shovel the copra over under the hatch?

A. Yes, sir, in digging down in the hatchway with a clam shell you would lose about two-thirds of your good copra. Take the lower hold, the hold is about twenty feet deep, you dig down in the center of it and just the good copra on the top in the opening is about all you would get, then you would be bound to get the wet copra mixed in with the dry, besides you would mash up a lot of your good copra, there is no way you can avoid it, these buckets are heavy and you have to let them drop or they won't work. You would never get anywhere near the amount of dry copra that way.

Q. What were the dimensions of those holds, Captain?

A. Approximately sixty to sixty-five or seventy feet in the square.

Q. How do you mean?

178 A. Why they are somewhere around sixty feet long and about a fifty foot beam and then you allow for the run of the ship.

Q. Where is the hatch located with respect to the center of these various holds?

A. In No. 3 it is just about in the center.

Q. And in No. 4?

A. In No. 4 it is in the after end, and in No. one it is almost in the center of the hold.

Q. Is the No. 4 hold about the same size as No. 3?

A. The hatchway is about the same in those, but it does not carry as much because you see the run of the ship comes back there and the funnel way and you have to allow for that.

Q. What is the size of the hatch openings?

A. I should judge about twenty by twelve.

Q. While this work of removing the copra was going on was there any work being done with a view to floating the vessel?

A. Yes, sir.

Q. Was that under your general direction too?

A. Yes, sir.

Q. When did you stop sending in the copra, Captain?

A. I beg your pardon, do you want me to explain the amount of the other work we did?

Q. When did you send in the last copra, when did you stop?

A. After we got out as much as we possible could get out by taking it out in baskets and sacking it, it was in the latter part of June, I don't remember the exact date, I would have to consult the log book.

179 Q. Now what was the condition of the copra left in the holds at the time you stopped sacking it?

A. The condition of the copra was that it was all in the water you take it out of the water and it was a sort of a light bluish color, it was not all decomposed, I dried some of it out on the deck, but it was covered with a sort of slime and after leaving it out in the air for a little while it decomposed rapidly with a terrible odor.

Q. How rapidly would it decompose.

A. After first getting it out of the water there wouldn't be hardly any odor to it but in a day it would be so bad you couldn't hardly stand it, a sort of a dry rot smell, when you got it out it looked slimy.

Q. Did it break up in handling it?

A. In getting it out from the hatchway where the people had been standing naturally there was a lot of it broken up with the shovels, you are bound to mash it up some, and the part after you got down to where the water was was more or less of a mash anyway.

Q. Captain, you stated that the copra was in three layers, a layer of dry copra, a layer partly dry and partly wet from being alternately submerged and drained and that which was always submerged, can you state what proportion of the dry layer was taken off?

A. I should say about seven-eighths.

Q. Why couldn't you get out all of the dry copra?

A. In handling it and standing on it naturally it went down a little and when we got towards the bottom of the layer the men would get some wet mixed in with the dry, you couldn't avoid it.

180 Q. Now this second layer which was alternately submerged and drained by the action of the tides, how much of that did you get out?

A. Not quite two-thirds, a little over half of it.

Q. What was the reason you were unable to get any more of that out?

A. We couldn't get out into the wings.

Q. By the wings you mean?

A. The places under the hatchways, the portion under the deck of the ship.

Q. The space was so limited that the men couldn't work in there is that the idea?

A. Not only that, you see the sides are almost perpendicular and it was stacked up clear back under the main deck and after we got this top layer off you couldn't get your platforms back in there and send the men in there, you see we couldn't lower a life line down on them when they were back in under and I wouldn't send the men back there without something to hold onto them with, there was nothing for them to hold on the platform with and I wouldn't send a man down there and maybe have him slip off the platform and be dead before we could get him out.

Q. Would that space be entirely filled with water at high tide?

A. It would be almost, I can give you an estimate, in No. 3 at high water it would go up about sixteen or seventeen feet and in the after hold from seventeen to nineteen feet.

That is all.

Cross-examination by Mr. Rohde:

181 Q. And the depth of the hold was about twenty feet?

A. Yes, that is in high water, the high spring tides.

Q. When did these clam shells or buckets come out to the Nippon?

A. Towards the latter part of June.

Q. Did you begin to use them at once?

A. I began to use them at once, yes, sir, when we found we couldn't use any other means to get the copra out.

Q. You used them as soon as they got there?

A. Well, not exactly as soon as they got there, but when we couldn't work it any more with baskets we started the clam shells, I know that we used the baskets in No. 1 quite a little while after the clam shells got there, and then in No. 3 and No. 4, the water seemed to run from one to the other and we found it impossible to do any work there any more and we couldn't send men down on the outside, they couldn't get to it to patch it up, the only thing we could do was get the copra out and get at it from inside, and the only place we could work the clam shells was right in the hatch. The question is this, we couldn't get the water out without getting the copra out so we could send a diver down there so we used these clam shells. We knew this big cuff was in the forward part, and we had to drag this copra and donnage out so the driver could get to it.

Q. And after you began to use the clam shells you continued using them until you got all the copra out?

A. We continued using them until we had her lifted up so that she would float and then we floated her off the reef and

182 towed her to Olongapo.

Q. Then when you testified as to the non-feasibility of using these clam shells or orange peels for getting out the dry copra you only speak theoretically, that is, not from actual experience?

A. I speak—well, a man would have to be a farmer to form any different opinion, a seafaring man or a cargador would certainly not attempt to do anything like that.

Q. Your reasons for thinking that a man would be a farmer to want*ed* to use these clam shells or orange peels for getting out the dry copra, Captain, are the reasons you have already stated?

A. Yes, sir, provided you wanted to save the cargo.

Q. You think that the man would be a farmer if he wanted to use clam shells to get the dry copra out?

A. Provided that he didn't want to save the cargo and knew the leak was there and just wanted to get the cargo out of the way to save the ship they would be all right, but if you are trying to save as much of the cargo as you can and get the best results you wouldn't want to use them, you would mash it all up getting it out of the hatches.

Q. You think these implements should not be used then because it would mash up the copra?

A. You would mash it up and you would only get a small amount of it out that way, as soon as you dropped your bucket a few times

it would dig a hole there in the center and the dry copra would run into it an- mix in with the wet.

Q. Couldn't you have had men down in there working the copra over under the hatches?

183 A. How can you send a man down there to stand in sixteen feet of water and work out in the wings, there is no way they could do it?

Q. About what proportion of the copra was wet?

A. Two-thirds of the copra was wet or damaged, more than that.

Q. Considerably more than two-thirds wasn't it?

A. Oh yes, sure, it was more than that.

Q. And you considered that the copra being wet or having been liable to get wet by the use of these clam shells would have destroyed it?

A. I don't know about that, it would have been mashed up, a certain percentage of it, it is bound to be. Suppose you have a heap of twenty tons of dry copra out here somewhere and drop a half of ton of iron down on it and you are going to mash some of it up and it will be a whole lot more so when it is laying in the water.

Q. The copra is broken up anyway isn't it?

A. Yes, but when it has been in the water for a month it is a different proposition, you would have nothing but a mush.

Q. Why were you put in charge of that work, Captain?

A. Well I don't know, I guess because I have some get up and go about me, and I have also had plenty of experience in deep water ships before I came out here.

Q. How old are you?

A. Thirty-six, will be thirty-six next summer.

That is all.

Witness excused.

The Court: The case will be continued until February 9, 1914, p. m.

184 Plaintiff thereupon read in evidence, without objection, the deposition of the witness, JOHN T. RUTTLEDGE, taken under oath upon notice of counsel for defendants, which deposition is as follows:

(Title of Court and Cause.)

Be it remembered that pursuant to the stipulation hereunto annexed, and on the 29th day of January, 1914, at Manila in the Philippine Islands, before me, John W. Haussermann, a Notary Public in and for the said City of Manila, personally appeared John F. Ruttledge, a witness produced on behalf of defendants in the above-entitled action, now pending in said Court, who being by me first duly sworn, was then and there examined and interrogated by F. C. Fisher, Esq., of counsel for plaintiffs, and by William J. Rohde, Esq., of counsel for defendants; that A. W. Beam, a competent stenographer, was duly sworn to take down the questions

and cross-questions propounded to the witness and his answers to them, and to transcribe them, faithfully and correctly, into long hand; that the testimony of the said witness so taken and recorded, is as follows:

185 January 29th, 1914.

Mr. Fisher: Please state your name.
A. J. F. Ruttledge.
Q. Your occupation and residence.
A. Engineer, Engineer's Island.
Q. How long have you been an engineer, Mr. Ruttledge?
A. Chief engineer about 14 years.
Q. Marine engineering mostly?
A. Yes.
Q. Of that time how much have you spent in the Philippine Islands?
A. About 8 years.
Q. You have been on board the steamer "Nippon" in the course of the salvage operations, have you not?
A. Yes, sir.
Q. On what occasion did you go out there?
A. I was employed by Erlanger & Galinger.
Q. In what capacity were you employed by Erlanger & Galinger?
A. Engineer on the pumps.
Q. Do you recall the date when you went out to the "Nippon"?
A. Left here the 27th of May.
Q. How long were you out there?
A. Until she came in.
Q. Had you been in the employ of the Insular Government prior to accepting employment with Erlanger & Galinger?
A. Yes, sir.
Q. When did you sever your connection with the Insular Government of the Philippine Islands?
A. On the 26th.
Q. Of the same month?
A. May, yes.

186 Q. What was the condition of affairs on the "Nippon" when you went out to Scarborough Reef on May 27th to take part in the salvage operations?

A. Of the ship, you mean?
Q. Yes.
A. Filled with water and partly filled with copra.
Q. What was being done with a view to getting the boat off the rocks and taking the copra out of her?
A. There was not very much being done with regard to the boat at the time.
Q. What method was being employed then with regard to the discharge of the copra?
A. Laborers with shovels, baskets and sacks.
Q. About how many men were there at that time?

A. Not having very much to do with that part of the work, I can't say. I should judge about 200.

Q. Were they working in more than one hold?

A. When possible, yes.

Q. You say "when possible"; what was there to prevent them from working in all the holds all the time?

A. The tide being too high.

Q. Was any effort made while you were out there to use pumps to remove the copra from the holds?

A. Yes, sir.

Q. You had charge of that during part of the operations, had you not?

A. Yes, sir.

Q. Please state what you did with those pumps toward getting the copra out. What success, if any, you attained.

A. We had a large pump from the Atlantic, Gulf & Pacific Co. We submerged the intake pipe at the bottom of the copra and tried to pump it from the hold onto a scaffold they had rigged there temporarily to drain the water from the copra and let the copra run into the S. S. "Borongan," but it was not successful.

Q. What prevented that method from being a success?

A. Due to the lining of the hold of the ship with matting to keep the copra from going into the bilges, when the water was nearly to the bottom the matting and sacking would float up to the pipe and clog the pump up so that it couldn't work.

187 Q. You made several attempts to overcome that difficulty, did you not, Mr. Rutledge?

A. We worked six or seven days at it.

Q. As a man familiar with machinery and mechanical appliances, please state whether in your judgment any other mechanical method than the ones you tried could have been used in removing the copra from the holds of the vessel?

A. I don't know of any mechanical appliances that could be used to take all the copra out of the vessel. It may have been able to take copra from the hatches.

Q. By what means?

A. Clam shell buckets.

Q. Do you think that would have been a good method to handle it?

A. Not if they wanted to save the cargo.

Q. What effect would they have had?

A. In the first place they could only have used them in the hatches, and if they had started use them the copra could not been saved, because the good copra would have been damaged by becoming damp.

Q. Please state whether there is any way by which clam shell buckets could have been used to take out any part of the copra which was not in the wake of the hatches.

A. I don't know of any.

Q. What, if anything, did you observe while you were out there as the effect on the laborers of the fumes from the copra?

A. The most serious effect was on their eyes.

Q. Did you yourself experience any discomfort on account of the presence of those fumes in the boat?

A. One occasion that was serious my eyes were closed. At all times your eyes were under a smarting sensation and watering, but by the use of medicine we managed to hold out.

Q. You did not go into the holds?

A. On a few occasions only. I was constantly in the engine room.

Q. Did those fumes penetrate into the engine room?

A. Yes, sir.

Q. There was water in the engine room when you went out there, was there not?

A. Yes, sir.

188 Q. Did you carry on any work in the engine room which required the use of divers?

A. Yes.

Q. What was the occasion to use divers inside?

A. On the rise and fall of the tide you could see the water bubbling in the engine room, and being concerned in plugging up the leaks in the vessel we naturally tried to find out what that was, and to find out we had to send a diver down to see.

Q. Did the diver succeed in locating the opening?

A. In one place there was supposed to be an opening where there was not.

Q. Was any particular difficulty experienced in the diving operations there?

A. One death.

Q. Death of one of the divers?

A. Yes, sir.

Q. And how did that happen, Mr. Ruttledge?

A. We had sent him down on noticing this bubbling in the water. Sent him down to see what it was. He found a hole where a floor plate had been removed. As the helmet was too large and he could not get through with the helmet to see he came up and decided to take his shoes off so that he could feel around with his feet. We sent him down and in a short time there was a jerk on the line and we pulled in and the helmet came up empty. As soon as the helmet came up we sent another diver down to find out what was the matter. In about a minute the second diver came up and took hold of the grating and pulled his head above the water and yelled "malo tubig." I could see that he was losing his hold and grabbed one hand and saved him in that way. We then tied another man with ropes and sent him down and he located the diver who had been drowned.

Q. Was the body of the diver that died recovered?

A. Yes, about 5 minutes after. One of the other divers went down and hauled him out.

Q. Was the water in your engine room in contact in any way with the water in the holds of the vessel?

A. Yes, sir.

Q. Weren't there watertight compartments in the "Nippon"?

A. Not at that time. They were supposed to be, but at that time they were not.

189 Q. Did you notice anything out of the ordinary in the character of the water entering into the engine room from the holds?

A. Filled with acid and of a whitish copra color.

Q. Did you notice any effects of the acid on the persons who came into contact with the contaminated water?

A. Very much so, myself in particular.

Q. What was the effect?

A. Smarting of the flesh. It turned my flesh black in several spots.

Q. Did you observe it had the same effect on other people there?

A. Couldn't tell on the natives. I know it smarted them considerable, because when they would come up they immediately ran down to the salt water to wash off. Their testicles would swell.

Q. How soon after coming in contact with this contaminated water from the copra holds would you observe this smarting effect?

A. It would act differently on different people. Some would not stay down over 5 or 10 minutes. It didn't seem to act so quickly on me because I did not stay in so long as they did.

Q. Did it have any permanent ill effect on you?

A. For a couple of months these black spots remained on my limbs.

Q. They had clam shell buckets out there, did they not?

A. Yes, sir.

Q. Was any use made of those buckets out there?

A. Yes. They used them at the last. After we had saved all the good copra they used the buckets on what was left and threw it overboard.

Q. Did you notice the character of the copra that was being removed and jettisoned by the buckets?

A. Nothing more than it was in a decayed condition.

Q. What was its consistency? Did you happen to feel any?

A. Some soft, some hard. Different parts of the ship that was hard. In a slippery, sour state.

Q. Did you have anything to do with the work of patching the holes in the Nippon with a view to floating her?

A. Yes, sir.

190 Q. What was the character of your work on that occasion?

A. Looking after divers plugging holes on the outside.

Q. What was the method employed in general in that operation?

A. Divers went down on the outside of the ship, going along finding out holes where the rivets were out and plugging them with wood.

Q. Was it possible to plug all the holes in the ship from the outside so that she could be floated?

A. No, sir.

Q. Why couldn't that be done?

A. Because the position of the ship laid in the rocks had penetrated the hold of the ship and to get to those holes it was necessary that the ship should rise off these rocks, and to make it possible to get to those holes the copra had to be taken out of the ship.

Q. What method was employed after the cópra was entirely re-

moved from the ship, including that part which was jettisoned with a view to patching the holes on the inside?

A. We plugged the holes on the inside.

Q. Were there many holes in the vessel?

A. Quite a number.

Q. Did you notice the tide rising and falling inside of the vessel?

A. That was the way we determined this bubbling in the engine room.

Q. Please state whether or not the water inside the vessel rose and fell with approximately the same rapidity as the rise and fall of the tide, or whether it was slower?

A. When I first went out it rose and fell with the same speed as the tide. When we got the holes plugged it would not go down so fast.

Q. Please state, Mr. Ruttledge, just exactly the process which was adopted to close the holes which you say you could not get at readily from the outside without shifting the ship. How did you do it?

A. After the copra was removed from the hold we plugged the small holes in the tanks as much as possible, and plugged what were supposed to be the largest holes. Then by action of the pump taking the water from the hold the ship was allowed to rise in high water. The ship was pulled clear of the rocks and as soon as this was done, by the assistance of the pumps and the men plugging the holes from the outside the inflow of the water was stopped.

191 Judge Rohde: Your occupation is that of marine engineer, Mr. Ruttledge?

A. Yes, sir.

Q. You have never followed any other occupation to amount to anything, have you?

A. Nothing more than mechanic in the machine shops.

Q. You have never worked with orange peels, clam shells, or buckets of that kind?

A. I have not personally worked them, but I have been around them considerable.

Mr. Fisher: Have you seen enough of the operation of clam shell buckets to be familiar with the way they operate?

A. Yes, sir.

Judge Rohde: Were these pumps that you have spoken of that were clogged by the gunny sacks there when you came to the ship?

A. No, sir.

Q. They came there about the same time, did they?

A. No, sir. Later.

Mr. Fisher: How many pumps were there out there, Mr. Ruttledge?

A. Five.

Q. They had a large pump of the kind called "sand sucker," did they not?

A. Yes, sir.

Q. How was it operated?

A. Steam.
Q. How did they generate the steam?
A. Small boiler placed on the deck.
Q. Did you have any difficulty in getting sufficient steam to operate it?
A. Not the one pump alone, but we operated a lot of them and we couldn't get sufficient steam.
Q. What caused it to be difficult to get sufficient steam to run all those pumps?
192 A. We did not have the boiler power necessary to run so many pumps.
Q. Were those boilers operated by fresh or salt water?
A. Salt water.
Q. Is salt water a good thing to use in steam boilers?
A. Not much.
Q. What is the effect?
A. It is liable to burn the boiler out. It forms such an amount of scale on the furnaces it is liable to burn the boiler and put it out of commission entirely.
Q. How was the steam applied to the operation of the pumps? Did they have steam cylinders on them?
A. No, steam engine.
Q. Was it part of the pump?
A. No, it was a separate engine.
Q. They had no condensing apparatus?
A. None.

Mr. Cohn: Did one of your boilers actually burn out on the "Nippon"?
A. Yes, sir.
Q. Was that a new boiler or an old boiler?
A. It was a new boiler that belonged to Erlanger & Galinger.
Q. What other means beside these boilers on deck did you have for supplying steam for your operations?
A. None until we used the "Borongan" for a while.
Q. Were the boilers of the "Nippon" in such condition that you could use their steam?
A. After we got to them.
Q. When was that?
A. I don't remember the date. It is in the log, I suppose. It was the latter part of June.
193 (Sgd.) JOHN F. RUTLEDGE.

Ced. No. 10091 *Issued at Manila, Jan.* 16, 1914.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

I, John W. Haussermann, a Notary Public, in and for the said City of Manila, do hereby certify that the witness in the foregoing deposition, John F. Ruttlege, was by me duly sworn; that the said deposition was taken at the time and place mentioned in the annexed stipulation, to-wit: at my office in the City of Manila, P. I.,

between the hours of three P. M. and five P. M. of the 29th day of January, 1914; that the said deposition was taken down in shorthand by A. W. Beam, a competent stenographer, duly sworn to record the same and correctly and faithfully to transcribe his stenographic notes thereof into longhand; that the foregoing transcription of the said deposition, made by the said stenographer, A. W. Beam, correctly and truly shows the questions and cross-questions propounded to the said witness and his answers to the same; that the said deposition, after being reduced to writing in longhand by the witness and being found by him to be correct, was signed by him in my presence.

In witness whereof, I have hereunto set my hand and affixed my official seal in Manila aforesaid this 3 day of February, 1914.

[Seal John W. Haussermann, Notary Public, Manila, Philippine Islands.]

(Sgd.) JOHN W. HAUSSERMANN,
Notary Public.

My Commision expires the day of December, 1914.

Dac. 610. Pag. 35. R. W. 21.

194 Plaintiff then read in evidence, without objection, the deposition of the witness C. E. LOTHIGUIS, taken under oath upon notice to counsel for defendants, which deposition is as follows:

Title of Court and Cause.

Be it remembered that on this 22nd day of January, 1914, before the Notary Public, Mr. John W. Haussermann, in the City of Manila, P. I., the deposition of Captain C. E. Lothiguis was taken by agreement of the parties in and to the above entitled action, to be used in evidence in the above entitled cause, subject, nevertheless, to all objections as to irrelevancy, immateriality or incompetency.

C. E. LOTHIGUIS, being first duly sworn, on oath testified as follows:

Direct examination by Mr. C. C. Cohn:

Q. Please state your name, residence and occupation.
A. C. E. Lothiguis, care Compañia General de Tabacos, P. O., Box 865, Master Mariner.
Q. Of what steamer, if any, are you master?
A. S. S. "Laloc".
Q. Did you have a command in the months of May and June of last year?
A. Yes, sir.
Q. What vessel was under your command during those months?
A. S. S. "Borongan".

Q. Who were the owners of the S. S. "Borongan"?
A. Compañia General de Tabacos.
Q. Who are the owners o fthe S. S. "Laloc"?
195 A. Compania General de Tabacos.
Q. How long have you been a master mariner?
A. Since 1903. I am not quite sure, I think 1903.
Q. How long have you been going to sea?
A. 18 years.
Q. Dod you know the S. S. "Nippon"?
A. Yes sir.
Q. Since when you have known her?
A. Since I first saw her stranded on Scarborough Reef.
Q. When was that?
A. June 1st, 1913.
Q. And how came you to be in the vicinity of the S. S. "Nippon" on that occasion?
A. I was ordered there by my charterers, Erlanger & Galinger.
Q. Did you have sailing orders from the charterers?
A. Yes sir.
Q. Have you those sailing orders?
A. Yes sir.
Q. How long did the S. S. "Borongan" remain under charter to Erlanger & Galinger?
A. From May 31st, 10 A. M. to June 23rd or 24th.
Q. Was it constantly under charter between those dates?
A. Yes sir.
Q. Did you keep a log on board the "Borongan" during that time showing operations of your vessel?
A. Yes sir.
Q. Have you that log?
A. It is not in my possession at the present time, but I can obtain it. It is now on the way to the ship.
Q. Have you a copy of that log?
A. Yes, part of the log, all the details concerning the wreck.

Mr. Cohn: I offer the log of the S. S. "Borongan" between the 31st day of May and the 23rd day of June, 1913, in evidence. By stipulation it is agreed that a copy of the pertinent parts
196 of the log may be attached to the record in lieu of the original, the copy to be submitted to the attorney for defendant and approved by him before being attached.

Mr. Rohde: I have no objections.

Q. I notice under date of June 2, P. M., you state that the "Borongan" was lying alongside of the wreck. Please state what you mean by that expression?
A. It means that my vessel was pulled alongside, lying side by side with the wreck.
Q. Was that the usual position of the vessel during the time that you were under charter to Erlanger & Galinger and were at the site of the wreck?

A. Whenever weather conditions allowed I went that way, but usually anchored and lay stern to the wreck. It is safer for your ship. It is taking more chances lying beam to the sea and ground sea slapping up against the ship. That put me in a more dangerous position than if I had lay stern to.

Q. During what part of the time that your vessel was at Scarborough Reef did she lay alongside of the Nippon and during what part of it stern to the Nippon?

A. The log will show that. I can't remember. Possibly once that I pulled alongside.

Q. Does your log show the position of the vessel each day?

A. Each day you will see from when I moved alongside.

Q. I will ask you this question: Where your log states the position of the Borongan with reference to the Nippon did your vessel maintain that position until some new position is noted in your log?

A. Yes sir.

Q. I notice on the same day—June 2, 1913, P. M.—you state that the discharge of the bulk copra was very hard on the crew in the ship's hold: in what way was it hard?

A. The fumes turned them sick at their stomach and closed their eyes up, and then their body got stiff and we had to rub them down with hot water. The acid from the copra turned everything black. I had my eyes full of it.

Q. I notice that under date of June 10th your log states that the launch came alongside with one corpse in charge of Captain Ben Taylor. Please state whose corpse that was and from where it came?

A. His name I do not recollect, the records of the health authorities will show that? But it was the body of one of the divers that was overcome in the engine room while diving.

Q. In what engine room?

197 A. In the Nippon's engine room. Every effort was made to get life into the man. I personally worked over him for not less than an hour.

Q. Captain, during the time that you were under charter to Erlanger & Galinger, did you perform any other work with reference to the salvage of the Nippon beside the loading of copra cargo from her hold?

A. In what way do you mean?

Q. In any way.

A. Working on the wreck?

Q. Yes. What other work did the Borongan perform?

A. I helped with my crew whenever I could, especially lifting pumps from one hold to another.

Q. Was the Borongan used for any other purpose than carrying cargo from the Nippon to the shore?

A. Yes, I disconnected my main boiler in order to get steam into the Nippon's wrecking pumps.

Q. What do you mean by disconnecting your boiler?

A. It means breaking my main steam pipe and leading it into

the Nippon to supply steam to work wrecking pumps in the various holds.

Q. Was it necessary to make this disconnection in order to furnish the steam from your boilers to the pumps?

A. It was necessary in order to get the water down in the Nippon's engine room, owing to the fact that the boilers sent out by the wreckers were burned out accidentally.

Q. To what boilers do you refer?

A. Donkey boilers sent out from Manila to supply steam to the wrecking pumps.

Q. Where were these boilers set up?

A. On the deck of the Nippon.

Q. Now, in order to furnish steam from your boilers—from the boilers of the S. S. "Borongan"—to the pumps was it necessary to disconnect the boilers of the "Borongan" from the engine of the "Borongan"?

A. Yes, absolutely.

Q. In what condition did that leave the S. S. "Borongan"?

A. It depends on the weather. It left her unmanageable for such a length of time as it would take to disconnect this gear and put her own steam pipe back on her engines.

198 Q. Do I understand that during the time the engines were disconnected from the boilers on the "Borongan" that the S. S. "Borongan' was without motive power and helpless?

A. Yes sir, absolutely, except laying to anchored—yes, helpless without motive power.

Q. For how long a period was the boilers of the Borongan used for supplying steam to the pumps on the Nippon?

A. I have to refer to the log. It gives the hours, the time I disconnected and gave steam and the time I was finished. I cannot remember hours very well after 6 or 8 months, but that is the correct time as stated by the log.

Q. Did you have sufficient water on board to maintain this steam consumption?

A. No sir.

Q. What did you do for fresh water for steaming purposes?

A. I broke into the Nippon's main boiler and took water from her and supplied my own boiler.

Q. Are you familiar with the methods that were employed on board the S. S. Nippon for taking off the dry copra from the top of the cargo.

A. Part of it, such copra as was discharged into my ship. The other vessels, of course, I could not tell.

Q. How was that copra removed from the Nippon that was put aboard your ship?

A. In backets, whipped aboard into the Borongan's hold.

Q. Was it put in the hold of the Borongan in bulk or in sacks?

A. Some in sacks some in bulk.

Q. Where was this copra sacked that came aboard your vessel in sacks?

A. On board the Nippon.

Q. And by whom?

A. Apparently by the wrecking crew. The majority of the copra was in bulk that I received.

Q. From what holds did this copra come?

A. The most of it came out of No. 3 and No. 4 holds. The dry came out of the 'tweendecks No. 3 and No. 4. All the copra in the hold was wet.

Q. Was any copra loaded in the Borongan by means of a pump?

A. Yes sir.

199 Q. Please explain that operation.

A. The wrecking pump in No. 3 sucked copra up a short time and I rigged a couple of flat benches as a chute, allowing the copra to run into the hold and the water to run out between the slats.

Q. Now what means did you have in that chute for allowing the water to run out?

A. There were gratings and the water ran out through the openings between the slats.

Q. You mean you had an open grating at the bottom of the chute?

A. I made that out of two of my benches, put them end to end. They were open between the slats and the copra ran along and the water ran through.

Q. Did that operation prove a success?

A. It did until the pump let go or stopped sucking copra.

Q. What caused the pump to stop sucking copra?

A. That is what we all tried to find out.

Q. Do you know what the size of that pump was?

A. 4 or 5 inch suction. I am not quite sure of the size of it. Maybe more, I couldn't state that for a fact because I did not look at it. 5 inch suction, maybe 6. That is easy to find out. The pump was sent from Manila.

Cross-examination by Judge Rohde:

Q. You say, Captain, that your vessel was anchored near the Nippon at times. How much anchorage was there around the Nippon?

A. The water was very deep quite close, it going up on a shelf. We ordinarily anchored the ship in 30 fathoms of water and when she was alongside it was 9 feet. Inside there was hardly any water.

Q. What distance from the ship was the water 30 fathoms deep, about?

A. 60 fathoms from the Nippon. Beyond 60 fathoms from the Nippon the depth increased rapidly. Very rapidly, 150 and no bottom.

Q. You never did find out why the pumps quit sucking copra?

A. No. They couldn't tell. We tried, thinking sacks got inside it, by cleaning out and taking fresh holds. The copra stopped up the larger of the pumps and when there was no more water she would not take any more.

Q. You made two trips to the Nippon?
200 A. Three trips.
Q. And the weather conditions are shown in the log?
A. Yes sir.

ESTADOS UNIDOS DE AMERICA,
Philippine Islands, City of Manila, ss:

I, John W. Haussermann, notary public in and for the said City of Manila, do hereby certify that the witness in the foregoing deposition Mr. C. E. Lothiguis was by me duly sworn; that the said deposition was taken at the time and place mentioned in the annexed stipulation, to-wit: at the office of Haussermann, Cohn & Fisher, Plaza Cervantes No. 9, between the hours of 4 P. M. and 5 P. M. of the 22nd day of January, 1914; that the said deposition was taken down in shorthand by A. W. Beam, a competent stenographer, and thereafter transcribed into longhand; that the foregoing transcription of the said deposition, made by the said stenographer, A. W. Beam, correctly and truly shows the questions and cross-questions propounded to the said witness and his answers to the same.

In witness whereof, I have hereunto set my hands and affixed my official seal in Manila aforesaid this 16th day of February, 1914.

[Seal John W. Haussermann, Notary Public, Manila, Philippine Islands.]

(Sgd.) JNO. W. HAUSSERMANN,
Notary Public.

My commission Expires Dec. 31, 1914.

Doc. No. 634. Pag. No. 40. Reg. No. 2.

201 *Copy of Ship's Logg-book While Under Charter to Erlanger & Galinger.*

May 31st. 10.00 A. M. Ship charte-d to Erlanger and Galinger. Took in Cargo for ——
Noon. Cleared in Custom House for San Fernando.
2.00 P. M. Rec-ived writ-en instructions from Erlanger and Galinger to proceed direct to S-arborough Reef and rec-ive such Cargo as their Agent there may turn over to me and return with same to Manila.
2.20 P. M. Left Manila for S-arborough Reef.
June 1st. Under way towards Scarborough Reef.
5.50 P. M. Sighted the Wreck of Stm'r Nippon.
6.30 " " Anchored of- the Wreck to Northward in 20 fms' water with 30 fms' Chain on both Anchors.
7.00 P. M. Boarded the Nippon and reported for Instru-tions, was told to lay by and wait *to* morning for furt-er orders.

June 2nd. 5.50 A. M. Hove Ship alongside the Nippon and com-enced to Discharge and Rec-ive Cargo, under dif-icult conditions Ship rolling heavy being broad side to the Swell. Well secured from pounding by Bover and Kedge anchors.
Keeping on loading Coprax in bulk and dischargen Cargo during the fore-noon.
P. M. Laying alongside the wreck and taking in Coprax in Bulk, Cargo wett and Nasty to handel, wery hard on Crew in Ship-s hold.
5.00 P. M. Stop-ed work for the Day, Night-work being impossible ond the Wreck.

202 June the 3d. 6.00 A. M. Turn to taking in Coprax in bulk from Wreck *serwal* of Ship-s Crew (6) compel-ed to stopp work on account of their Eyes Closing up.
11.00 A. M. One Sailor overcome with fumes from Coprax hoisted him out of hold and gave him Hot and Cool bath's untill he came to.
11.50 or Noon. Man recovered suf-icient to move on his own accord.
P. M. Loading Coprax in sacks from Wreck, also General Merchandice. kept on working to 9.30 P. M. Rec-ived orders from Charter partyes Represen--ative to proceed to Manila.
10.00 P. M. Left Scarborough for Manila.

June 4th. A. M. Under way towards Manila.
Eye sight and general condition of si-k Crew improving.

June 5th. 0.50 A. M. Anchored outside Breakwater in Manila Bay.
6.00 A. M. Bo-rded by Quarantine Officer, granted Partique Rec-ived orders from Harbor-Master to go to Peir No. 5.
7.00 A. M. All fast at Peir No. 5.
7.30 " " Com-enced to discharge Cargo.
P. M. Dischargen Cargo on Peir No. 5.
9.00 P. M. Finish dischargen Cargo.

June 6th. A. M. Took in Cargo presented.
11.00 A. M. Cleared in Custom house for Iba.
Rec-ived written instru-tions from Charted Oweners to Proceed to S-arborough Reef and report to the Officer in Charge of the Nippon.
Noon. Left Peir No. 5 and Proceeded on Vo-age.

203 June 7th. Under way to S-arborough Reef.
0.30 P. M. Sighted the Nippon.
2.00 " " Anchored of- the Nippon in 17 fms' water 50 fms' Chain. Discharged Cargo.

June 8th. 6.00 A. M. Com-enced to take in Coprax from Wreck, took in 3 boatloads. Stop-ed work on wreck on account of having other work to do.
P. M. Laying off wreck waiting for Cargo loaded no cargo during the afternoon, not being abel to work on the wreck Conciderable Ground Swell running round Reef.

June 9th. 6.00 A. M. Com-enced to load coprax from wreck.
P. M. Taken Cargo of- the Nippon, Stop-ed work on the Nippon in the afternoon re-son unknowen.

June 10th. 5.30 A. M. La-nch came longside with one Corpse in charge of Capt. B. Tailor also 30 laborers Orders rec-ived to Proceed with all haste to Manila.
3.50 A. M. Left for Manila.

June 11th. 7.45 A. M. Anchored outside Breakwater, Harbor-master came longside and ordered the Ship to Anchor off Peir No. 5.
8.00 A. M. Anchored off Peir No. 5 waiting Quar-antine Offi-.
9.00 A. M. Granted Partique went longside Peir No. 5.
9.30 A. M. All fast at Peir No. 5.
10.00 A. M. Com-enced to discharge Cargo.
P. M. Took in Cargo of Cement, Sand, Gravel and Supplies during the after-noon.

204 June 12th. A. M. Orders to sail for Scarborough Reef, Waiting for passengers to come *Ombord*.
11.30 A. M. Finish Coaling, Moved to End of Peir No. 5.
2.00. Passengers (laborers) all *ombord* left Peir No. 5 for S-arborough Reef.

June 13th. 6.00 P. M. Picked upp Wreck Ahead.
7.15 " " Anchored off S. S. Nippon in 16 fms' water 45 fms' Chain Port Anchor.

June 14th. 6.00 A. M. Picked up anchors, them having drag-ed in to deep water. Poor holding ground. Made vari-ous attempts to gett hold on starbo-rd anchor.
8.00 A. M. Suc-eeded to get hold, runn line to Nip-pon discharged cargo between Squalls.
P. M. Laying to with both anchors and a Line to Nippon dischargen cargo between Squalls.

June 15th. A. M. Laying longside the Nippon standing by, No work done by ship-s Crew ex-ept boating.

June 16th. Discharged remainder of Cement and Sand.
P. M. Gott 2½ Tons of Water from the Corigadore, also some Provisions.

June 17th. Supplied Nippon with 50 ft. of Fire hose for the pur-pose of making a Steam hose. Assisted to make Steam hose and con-ected same with our Mean Boiler in order to give Steam for working Big Wrecking Pump.

3.00 P. M. Finished con-ecting Steam hose from our Mean Boiler to the Nippon-s Large Wrecking Pump in No. 3 Hold.

205 June 17th. 8.00 P. M. Started Steam from our Mean Boiler to Nippon-s Circulating Pump in Engine-room.

June 18th. 10.00 A. M. Lowered watter in the Nippon suf-iciently to start Steam on Nippon-s Donkey Boiler. Took water from Nippon-s Mean Boiler to supply our Boiler by the use of a force hand pump.

Con-ected pipe line to Nippon-s large wrecking pump from our Mean Boiler, Gave Steam, Rigged lath *Shut* from benches and placed same under pump discharge, leading *shut* in our fore hold, saving coprax pumped over side. About 3.00 P. M. Pump Sucking in No. 3 Hold.

June 19th. A. M. Worked crew *ombord* the Nippon taken Large Wrecking-Pump out of No. 3 Hold and placed on Deck, Crew assisting at odd Jobs.

P. M. Worked Ship-s Crew Riggen gear and placing large wrecking pump and engine in No. 4 Hold and con-ected upp pipe line for same.

June 20th. 6.30 A. M. Gave Steam to Pump in No. 4 hold.

7.45 " " Steam hose Coupling blew out. Discon-ected Mean Boiler from the Nippon as the Nippon Donkey Boiler hade sufficient Steam to keep pumps going, and in order to have the Borongan ready for tending Anchors, etc.

June 21st. 6.00 A. M. Let go from the Nippon and went in possition to Two Nippon-s Bow Anchor in to Deep Water.

9.00 A. M. Hade anchor placed, Picked upp Scow and brought same back to the Nippon.

206 June 21st. 8.00 A. M. Went and placed Ship in possition to Tow on the Nippon-s Stern. runn 4¾ inch Cir-Steel Hawser and stood by to Tow.

11.05 A. M. Com-enced to Tow and heaving on both anchors at the same time. Made *serval* attempts without suc-ess, carr-ing away hawser Chocks on quarter rail on both sides.

11.45 Parted Hawser. Gott my ship back in possition and stood by for further orders.

5.00 P. M. Rec-ived orders from Capt. Anderson to proceed to Manila with 17 laborers and instructions.

8.00. Passengers *ombord*, left for Manila.

June 22nd. Underway towards Manila.

June 22nd. Arrived in Manila.

207 Plaintiff then read in evidence, without objection, the deposition of the witness BALDOMERO FERNANDEZ Y ASIS, taken under oath upon notice to counsel for defendants, which deposition is as follows:

(Title of Court and Cause.)

Be it remembered that pursuant to the stipulation hereunto annexed, and on the 2nd day of February, 1914, at Manila, in the Philippine Islands, before me, John W. Haussermann, a Notary Public in and for the said City of Manila, personally appeared Baldomero Fernandez y Asis, a witness produced on behalf of plaintiff in the above entitled action, now pending in said Court, who being by me first duly sworn, was then and there examined and interrogated by Charles C. Cohn, Esq., of counsel for plaintiff, and by William J. Rohde, Esq., of counsel for defendants; that A. W. Beam, a competent stenographer, was duly sworn to take down the questions and cross-questions propounded to the witness and his answers to them, and to transcribe them, faithfully and correctly, into long hand; that the testimony of the said witness so taken and recorded is as follows:

Direct examination by Mr. Cohn:

Q. Please state your name, residence and occupation.

A. Baldomero Fernandez y Asis; Isaac Peral, Manila; warehouseman for the Compañia General de Tabacos de Filipinas.

Q. As warehouseman, have you had any experience with the handling of copra, and more particularly with the lading and unlading of copra in vessels?

208 A. I have had 20 years' experience in handling copra. During that time we have shipped copra in large quantities to Europe. Naturally I have had to do with the stowage of this copra.

Q. Please give us some idea of the quantity of copra that you have handled per annum during the last 20 years for the Compania General de Tabacos.

A. The last few years on the average over 20,000 tons a year. The former years I did not handle so much.

Q. Please state, if you know, what is the effect upon copra of wetting, and especially of wetting copra by salt water?

A. The effect of wetting copra in salt water is very deleterious, because if copra has been wet with salt water it won't dry off unless it is first washed with fresh water, and afterwards dried out. If copra has been exposed to salt water for several days it turns a dark undesirable color.

Q. In about how many days does copra suffer this latter effect?

A. In the case of copra which is very dry and in which the weevil has made holes the effect is more pronounced than in copra not presenting these conditions, on account of the increased surface which is exposed to the operation of the salt water. In copra in good condition more recently cured and which has not been subjected to the action of weevils, or borers, the deleterious effect takes a longer time to make itself noted.

Q. In about what time in one case or another is this effect produced?

A. Generally about the third day, and at the end of the 5th or

6th day the copra is generally so far gone as to be practically worthless.

Q. Does your last answer refer to copra which is dry and bored by insects, or to the more recently cured copra?

A. My answer refers to all classes of copra. The worm eaten copra is spoiled the third day and the more recently cured copra lasts until the 5th or 6th day on account of the resistant qualities of the harder meat of the copra.

Q. Is there any difference in this regard between copra that is wholly submerged in the water and copra that has been merely wetted by salt water?

A. The deterioration in submerged copra goes on more rapidly than in copra which has been merely wet.

Q. If there any way by which these effects can be arrested or cured after copra has been submerged in salt water?

A. Yes; if decomposition has not set in, by washing it in
209 fresh water and by drying it in the sun you can arrest this process. Unless you get rid entirely of the salt from the copra you can never properly dry it even if you leave it in the sun. As soon as you take it in the copra seems to get soft and begins to ferment and decompose.

Q. How thoroughly does copra that has been wetted by salt water have to be washed in fresh water?

A. It must be stirred thoroughly and washed in running water so that different volumes of water may pass over it.

Q. For how long a time?

A. This process should be continued until all the salt that can be removed by this method has been removed. You can't get rid of all of it even by this process.

Q. Is this process available and beneficial after decomposition has set in on the copra?

A. No, I think not. After that stage has been reached the salt is well impregnated in the pores of the copra and it would always be soft and mushy.

Q. How soon after the original submersion of the copra must this method be adopted in order to make it beneficial?

A. At the earliest possible time, before decomposition sets in. I should think that after 5 or 6 days it would be useless.

Q. Have you had any actual experience with copra that has been submerged in salt water?

A. Yes sir.

Q. What was that experience?

A. Some 12 or 13 years ago—I cannot remember the exact date, but it was a year or a year and a half after American Occupation, while we were loading some copra, two cascos loaded with copra were sunk by a storm in the waters of the Bay, at the entrance to the harbor, by being driven against the breakwater. The Compania General de Tabacos was appointed by the insurance companies who were salving this copra to undertake the salvage operations in connection with them. I took charge of the work and had native divers *do* down and bring up the sacks in which the copra had been placed,

and we paid them at the rate of 20 centavos for each sack they brought up. This operation covered a period of three or four days, I don't remember exactly which. The last sacks they brought up and turned over to me I found were not worth the 20 centavos it was costing to bring them up and we decided to abandon them.

Q. Did you also abandon the sacks that remained at the bottom of the Bay?

A. Yes sir, and also some others that the divers brought up
210 and which upon examination I found were not worth the 20¢ we paid for the diving work.

Q. Between the sacks that remained at the bottom of the Bay and the sacks that you refused to give 20¢ for, about how many in all were abandoned?

A. Some eighty odd. This was without counting others that were not found.

Q. This you say was on the third or fourth day after the vessels had been sunk by the baguio?

A. Yes, on the fourth day after this happened I did not care to accept the copra which was being brought up.

Q. Before the sinking of these cascos was this copra in good condition?

A. There was copra of the various qualities, some of the old stuff and some of the best quality, because in making shipments of copra it is customary to mix the various grades.

Q. What was the condition of the copra that was offered to you and not accepted and abandoned?

A. It was going to pieces—soft and mushy—decomposed.

Q. What would be the effect, Sr. Fernandez, of copra that had been submerged in salt water for several days; then removed and left in the open air for 24 hours without being washed in fresh water?

A. It turns black on account of the fermentation. It commences to give off fumes.

Q. What would be the commercial value or the value for commercial purposes of such copra?

A. Such copra alone would not be accepted in any factory in Europe, and so whenever we have any of that kind on hand we mix it with the other in the proportion of 4 or 5 per cent. to get rid of it gradually.

Q. Does the copra undergo any other change besides turning black?

A. In addition to turning black the copra is soft and greasy—the oil seems to be exuding from it.

Q. Sr. Fernandez, suppose you had a vessel laden with copra in bulk, which was stranted by reason of holes in her bottom so that her holds were filled with some 15 feet of water, and a part of the copra cargo on the bottom submerged in this water constantly; a part immediately above this alternately wet and drained by the rise and fall of the tide, and the third layer on top that was not reached by the salt water, and suppose this cargo had remained in this condition for ten days or more, at a distance of 190 miles from the

nearest port, what means, if any, would be available for get-
211 ting out the dry copra without mixing the same with the wet copra?

A. I think that the proper thing to do would be to send out sacks and baskets, and vessels into which to transfer the copra; that if possible the dry copra should be sacked on board the ship, or else, if it could not be sacked on board the ship, that it be shoveled into baskets and sacked after it had been removed from the vessel.

Cross-examination by Judge Rohde:

Q. In how deep water, or in what depth of water was this copra that you speak of in the Bay of Manila submerged?

A. It was in shallow water of the Bay. The water was deep enough so that the vessel in which the copra was contained was completely submerged except that at low tide you could see the upper part of the superstructure.

Q. Copra does not float does it?

A. It does at first, but afterwards it sinks. It floats for a time until the sack has become soaked.

Q. What would you consider, Mr. Fernandez, the effect of salt water on a copra when it submerges the copra daily at high tide and leaves it without being submerged at low tide?

A. My understanding is that under those conditions the injury to the copra would not be so great or its effect so rapid as it would be if completely submerged.

Q. And it is your opinion that three days' submergence of copra in salt water destroys it completely?

A. Part of it would become useless in that time but not all.

Q. Weevil eaten or bored copra would be destroyed at least within 4 days.

A. Yes, in that time it would turn into pulp.

Q. And good copra would be entirely destroyed between about 5 and 6 days?

A. Of course that depends on what you mean by good copra. In the business we generally understand by "good copra" the driest copra. The very dry copra is that which is likely to be somewhat worm eaten, and that does not resist the water so well. The "current" or ordinary copra is not so dry and that is stronger.

Q. I understood you, Mr. Fernandez, to say in your direct examination that all copra would be destroyed in six days of submersion?

A. Not completely, but the greater part of it, yes. It would be worthless for commercial purposes.

Q. At the end of six days?

212 A. Yes, at the end of 5 or 6 days, the useless or worthless part would be greater than the valuable part remaining at the end of that time.

Q. Within seven days would it all be destroyed?

A. I have never seen any copra under water seven days.

Q. And copra that would be alternately submerged and drained

by the tide would last, then, according to your opinion, between three and six days?

A. There would be some part of it still valuable.

Q. Are you a seafaring man, Mr. Fernandez, or ever have been?

A. No sir.

Q. Have you ever had anything to do with lading or unlading vessels?

A. That is my calling, my occupation, in connection with my employment as warehouseman.

Q. You are not a stevedore, are you?

A. No sir, but I have to do with the stowing, as we charter vessels for the purpose of handling copra and sometimes the stevedores do not stow the cargo in such a way as to utilize all the space, and I am on the lookout so see that the stowing is done so as to use as much of the space as possible.

Q. Do you direct how the stowing shall be done?

A. No, but for instance when the captain or the stevedore reports to us that the vessel will not hold the quantity of copra which it should carry according to its cubical contents, then I go out to see if the stowing has been properly done.

Q. Do you ever direct how the vessels shall be laden or stowed?

A. Yes, I look after the placing of the cargo, because, as we ship copra and tobacco I have to see the tobacco is placed in such a way that the copra will not have any deleterious effect on it.

Q. Have you ever directed the work of lading a vessel with copra or any other merchandise?

A. No sir. I direct the placing of the cargo on the lighters and small vessels which carry the copra from the warehouse to the ship.

Q. Have you ever directed the unlading of a vessel?

A. Small vessels that come into the river belonging to the company, yes.

213 Q. Are you familiar with any of the machinery used or employed in unlading or lading vessels, Mr. Fernandez?

A. I have never run any of those machines, but I can see if they are doing it right or doing it wrong.

Q. What are they?

A. Little machines that they have on deck of a ship for the purpose of running the hoist and lifting and dropping the rope.

Q. Do you know the names of them?

A. We call them engines, and the other thing is called the spar.

Q. Did the Compania General de Tabacos buy any of the copra landed from the "Nippon"?

A. Yes sir.

Q. Do you know how much?

A. They bought two lots amounting altogether to something like 100 tons, I don't remember exactly the quantity.

Q. Had any of it been wetted by salt water?

A. I think two lots we rejected some 30 sacks that contained wet copra. Before the purchase I had been down and inspected the copra to see whether it was such as we cared to buy.

Q. The Tabacalera did not buy the 30 sacks that you rejected?

A. No sir, the purchase was made on condition that we could have the right to reject what did not suit us, and those 30 sacks remained on the pier.

Q. That lot of copra bought by the Tabacalera was dry and had not been submerged in the water?

A. Yes sir. Completely dry.

(Sgd.) B. FERNANDEZ,

Ced. No. F14018, issued at Manila, Jany. 28, 1914.

UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila, ss:

I, John W. Haussermann, a Notary Public in and for the said City of Manila, do hereby certify that the witness in the foregoing deposition, Baldomero Fernandez y Asis, was by me duly
214 sworn, that the said deposition was taken at the time and place mentioned in the annexed stipulation, to-wit, at my office in the City of Manila, P. I., between the hours of three P. M. and five P. M. of the 2nd day of February, 1914; that the said deposition was taken down in shorthand by A. W. Beam, a competent stenographer, duly sworn to record the same and correctly and faithfully to transcribe his stenographic notes thereof into longhand; that the foregoing transcription of the said deposition, made by the said stenographer, A. W. Beam, correctly and truly shows the questions and cross-questions propounded to the said witness and his answers to the same; that the said deposition, after being reduced to writing in longhand by the witness and being found by him to be correct, was signed by him in my presence.

In witness whereof, I have hereunto set my hand and affixed my official seal in Manila aforesaid this 9 day of February, 1914.

[SEAL.] (Sgd.) JOHN W. HAUSSERMANN,
Notary Public.

My commission expires December 31st, 1914.

Reg. No. 623. Page No. 38. Doc. No. 2.

215 Plaintiff then read in evidence, without objection, the deposition of the witness, H. B. McCoy, taken under oath upon notice to counsel for defendants, which deposition is as follows:

(Title of Court and Cause.)

Be it remembered that pursuant to the stipulation hereunto annexed, and on the 4th day of February, 1914, at Manila, in the Philippine Islands, before me, John W. Haussermann, a notary public in and for the said City of Manila, personally appeared H. B. McCoy, a witness produced on behalf of the plaintiffs in the above-entitled action, now pending in said Court, who being by me first duly sworn, was then and there examined and interrogated by F. C. Fisher, Esq., of counsel for plaintiffs, and by William J.

Rohde, Esq., of counsel for defendants; that A. W. Beam, a competent stenographer, was duly sworn to take down the questions and cross-questions propounded to the witness and his answers to them, and to transcribe them, faithfully and correctly, into longhand; that the testimony of the said witness so taken and recorded is as follows:

Direct examination by Mr. Fisher:

Q. Please state your name, occupation and residence.

A. Henry B. McCoy, Manila.

Q. You were the Collector of Customs at the time that the steamer "Nippon" was stranded on Scarborough Reef, in May of last year, were you not?

A. Yes, sir.

216 Q. Please state whether or not you recall having been present at a conference called by Vice-Governor Gilbert, at the residence of Major-General Bell, in this City, in July of last year, for the purpose of considering the question of the methods being employed by Messrs. Erlanger & Galinger in the salvage of the S. S. "Nippon."

A. Yes. I was present at that meeting.

Q. Please state the names of the persons who were there besides yourself.

A. I will state all I can recall: There were Mr. Cohn; Judge Rohde; Governor Gilbert; Captain Eggert of the "Nippon"; Captain Breckwold, the insurance agent; Mr. Stroebel, of Struckmann & Co.; Mr. Underwood of Ker & Co.; Mr. Laing, the Consul of Sweden, and myself.

Q. Please state whether or not you recall any statement having been made concerning the sending of a wireless telegram by Captain Dixon of the "Manchuria" to the Manila Station relating to the stranding of the "Nippon" on Scarborough Reef.

A. Yes, there was a statement made by Captain Eggert of the "Nippon" regarding the sending of a wireless telegram, but I don't recall that he said where it was sent. But he did state that after he had been taken off the "Nippon" and was on the "Manchuria" a wireless message was sent by Captain Dixon in relation to the taking off of the crew.

Q. Did he state whether or not he had been informed of the contents of that message sent by Captain Dixon?

A. He said that when this message was being prepared that he was with Captain Dixon and that the message was shown to him before being sent.

Q. Do you recall Governor Gilbert having asked Captain Eggert on that occasion whether or not he was pleased when the "Manchuria" came in sight on the occasion when he was taken off by the "Manchuria"?

A. Yes, Governor Gilbert asked him that question.

Q. What did he reply?

A. As I remember, he said he never was as glad to see anything in his life as he was to see the "Manchuria", or words to that effect.

Judge Rohde: Colonel, Mr. Fisher, in his first question, takes it for granted that the meeting at the Vice-Governor's was called for the purpose of discussing the method of salvage; is it not a fact that the purpose of the meeting was not disclosed excepting after they were there—these persons that you have named?

A. I think that is true. That is, when I was called for I was asked to come to Governor Gilbert's house in regards to a consultation regarding the "Nippon" matter.

217 Q. Is it not a fact that Captain Breckwold, in behalf of the underwriters, Mr. Underwood, in behalf of the owners of the ship, Captain Eggert of the ship, in behalf of the ship, and myself and Mr. Stoebel, in behalf of the copra cargo, endeavored to convince the Governor that he should take measures to remove the personnel of Erlanger & Galinger?

A. I think that is absolutely true; yes, sir.

Q. That is, at that time we all protested against Messrs. Erlanger & Galinger proceeding with the salvage work?

A. I think that was your argument to the Vice-Governor, as I remember it.

Mr. Fisher: Colonel McCoy, please state whether or not at that time anything was said about the cancellation of the charters of the coast guard boats being used by Erlanger & Galinger in the salvage operations.

A. That was one thing the Governor was asked to do.

Q. By whom?

A. By the people representing the boat. They asked the Governor to refuse to permit Erlanger & Galinger to charter government vessels for this purpose and they objected strenuously to the chartering of the boats to Erlanger & Galinger for the purposes of their salvage operations.

[Seal John W. Haussermann, Notary Public, Manila, Philippine Islands.]

(Sgd.) H. B. McCOY,
*Cedula No. E*13661, *Issued at Manila,* 1/27, 1914.

UNITED STATES OF AMERICA,
Philippines Islands,
City of Manila, ss:

I, John W. Haussermann, a notary public in and for the said City of Manila, do hereby certify that the witness in the foregoing deposition, H. B. McCoy, was by me duly sworn; that the said deposition was taken at the time and place mentioned in the annexed stipulation, to-wit: at my office in the City of Manila, P. I., between the hours of three P. M. and five P. M., of the 4th day of February, 1914; that the said deposition was taken down in shorthand by A. W. Beam, a competent stenographer, duly sworn to record the

218 same correctly and faithfully to transcribe his stenographic notes thereof into longhand; that the foregoing transcription

of the said deposition, made by the said stenographer, A. W. Beam, correctly and truly shows the questions and cross-questions propounded to the said witness and his answers to the same; that the said deposition, after being reduced to writing in longhand by the witness and being found by him to be correct, was signed by him in my presence.

In testimony whereof I have hereunto set my hand and affixed my official seal in Manila aforesaid this 11th day of February, 1914.

(Sgd.) JOHN W. HAUSSERMANN,
Notary Public.

My Commission expires December 31, 1914.

Reg. No. 626. Page No. 38. Doc. No. 2.

By agreement in open court it was stipulated that the facts stated in Plaintiff's Exhibit "A" are true.

219 Mr. PRATT, a witness called by the plaintiff, being first duly sworn in open court, testified as follows:

Direct examination by Mr. Fisher:

Q. Please state your name, occupation, and address.

A. David S. Pratt, chemist, Bureau of Science, No. 218 calle San Luis, Manila.

Q. What are your qualifications as a chemist, Mr. Pratt?

A. Four years undergraduate work at Cornell University, three years of graduate work, including two years of teaching, a year and a half in the Bureau of Chemistry in Washington, and two years as a chemist in the Bureau of Science, Manila.

Q. Doctor, have you ever investigated the effect of salt water upon copra?

A. I have.

Q. What was the nature of that investigation?

A. Regarding the decomposition caused by salt water on the copra?

Q. Yes, but what methods did you employ for the purpose of determining the nature of the decomposition?

A. Chemical, physical, and observation.

Q. Please describe in a general way the methods employed by you and the apparatus which you used for that purpose.

A. Approximately three hundred kilograms of Philippines copra were placed in a galvanized iron tank, the tank being devised with a means for allowing salt water to enter or leave the tank at the bottom, the salt water in the tank being alternately raised and lowered in this tank to represent approximately the action of the rise and fall of the tide. The copra in the tank was divided into three parts, the lower one-third of the tank being constantly flooded with salt water,
220 the middle one-third alternately flooded and drained, and the salt water never reached higher than the middle one-third, leaving the upper one-third entirely out of the water and never in contact with it.

Q. What effect did you find the salt water to have upon the copra?

A. The first effect was the rise in the moisture of the entire mass of copra, the copra above the high water level absorbed water from the water vapor, the copra in the middle section, or what might be called the tide water section, by actual contact, the copra in the lower third of the tank being always in contact with the water absorbed it in a similar way.

Q. What is the effect of the absorption of salt water by the copra, from your observation with this experiment?

A. The absorption of water causes it to assume a condition of either mold or bacteria according to the percentage of the moisture content of the copra.

Q. In which of the layers did you find the bacterial action?

A. The bacterial action predominated in the lower one-third, which was always submerged, and in the tide water section, alternately submerged and dried, and the upper section was a mixture of bacteria and mold, the upper section was principally mold.

Q. What is the effect of bacterial action upon the copra?

A. Bacteria of the kind acting upon copra effects the protein or celol to a greater or less extent, thereby liberating the oil, and there is a slight action also noticed on the oil itself.

221 Q. How long after the copra had been subjected to the action of the salt water did the deleterious effect become noticeable?

A. The first examination of the lower layers of the copra in this apparatus was made on the 6th day after the salt water was admitted to the tank and a certain amount of deterioration was already noticeable at that time.

Q. Was the deterioration progressive from that time on?

A. The deterioration would have been progressive under conditions where the salt water in this tank was not contaminated salt water, but that condition was practically impossible in experimental work, therefore the deterioration of the copra was not uniformly progressive, but was more noticeable on those days on which the new sea water replaced the old or contaminated sea water.

Q. Please explain that, why the admission of fresh sea water accelerates the bacterial infection and increases the deterioration of the copra?

A. The bacteria during their growth and multiplication live upon suitable material in the copra and as this material is consumed by the bacteria it is converted into waste products of a great and complex variety, including acids, and the multiplication of these waste products will ultimately kill the bacteria, therefore as it goes on if the same water is present the waste products of the bacteria will themselves kill the bacteria, in exactly the same manner that the waste products of yeast will stop the formation of alcohol when the

222 alcohol reaches a certain amount.

Q. Did you make a count of the bacteria to determine the progress?

A. The bacterial count for the first few days showed a continual decrease; it dropped from about, roughly, 75,000 per cubic centi-

meter on the first day and from then it decreased at a fairly uniform rate to the sixth day, when it had decreased to between one and two thousand.

Q. Did you change the water then or cause it to be changed in your experimental tank?

A. That was the first opportunity I had to learn the decrease of the bacteria and as it required for that determination on the sixth day the water was changed, new salt water let into the tank and immediately the number of bacteria increased, until the following day they had reached the large number of approximately 85,000.

Q. Please state whether the bacteria are introduced by the salt water itself or whether the salt water is merely the medium which causes this action on the copra?

A. Some are introduced by the salt water, but in no such number as that.

Q. Dr. Pratt, did you find any increase in the temperature of the tank as the result of these experiments?

A. Copra in a moist condition causes the production of heat very rapidly, due to decomposition, although this tank which we used in our experiments was necessarily very small, simply a galvanized iron tank, and the heat radiated from it very quickly, being an open tank, nevertheless in the center of the tank there was a considerably
223 higher temperature noticeable; I might add that the temperature in the center of the tank was as much as twenty degrees higher than outside.

Q. Does that increase in the heat accelerate or decrease the growth of the bacteria?

A. There is a maximum temperature at which the bacteria can live and up to that point it facilitates the growth of the bacteria.

Q. What is that maximum temperature?

A. In the neighborhood of forty degrees centigrade.

Q. You were out on the Nippon on Scarborough Reef, were you not, Doctor?

A. I was.

Q. Please state when?

A. I reached there on the 20th of June, 1913, and left there on the 24th of June of the same year.

Q. You familiarized yourself while you were there, did you not, with the method in which the copra which formed a part of the cargo of that vessel had been stowed?

A. I investigated the vessel rather thoroughly in the condition in which it was at that time.

Q. Please state, Doctor, whether the experiments which you carried out with this copra approximated the condition of the copra in the Nippon as she was stranded on Scarborough Reef?

A. It approximated the conditions existing on the Nippon as nearly as possible under experimental conditions such as we have, the fact of the smallness of this experiment was the chief dif-
224 ference.

Q. What effect did this difference of bulk have, if any?

A. It would have a rather important effect for several

reasons, in the first place the bulk of the copra in my experiment was very much less than was present in the Nippon, second, the copra at the bottom of the tank in this experiment was under much less pressure, the heat radiated much more rapidly, and the further difference that it was impossible under the conditions we had to introduce fresh or new sea water, as you might call it, in the way in which it was introduced into this vessel, that is every time the tide rose or fell or a wave passed over the reef on which the vessel was stranded, that, of course, was a condition which was impossible to duplicate in an experimental way.

Q. Please state whether or not the conditions which you have just mentioned tended to increase or diminish the rate of deterioration of the copra in the Nippon?

A. In my opinion it tended to increase the decomposition over what I was able to accomplish in a small way.

Q. Doctor, you took samples, did you from time to time of the copra subjected to this experiment?

A. I did.

Q. I will ask you to examine this bottle of copra——

Mr. Rohde: I don't think vegetable matter of this kind is admissable as evidence, it would be impossible to transfer it to the higher court on appeal, and it is very probable that the condition would not be the same in some months from now, or even weeks, that it is now.

225 Mr. Fisher: The principal object in introducing it at this time is for the purpose of identifying it in order that a commercial expert we expect to put on the stand may be able to testify as to values.

The Court: It may be identified for the purpose of having another testify afterwards as to the difference in values, but I do not think it could be admitted as evidence.

Q. This bottle which you have here, and which we will mark Exhibit "AA" for identification, was taken from that experimental tank of yours was it?

A. Yes, sir.

Q. How long after the copra had been subjected to the action of the salt water?

A. This was taken on the tenth day after starting and represents copra above the high tide line, the copra never touched by the salt water.

Q. Inasmuch as this particular copra can not be preserved, Doctor, for the purpose of forming a permanent exhibit I will ask you to state from your knowledge of the copra when you put it in the experimental tank what if any difference you observe in its condition at this time?

A. The moisture content is sligh-ly higher and molds had started to develope, although the condition of the copra is not greatly different from the original copra.

Q. Here is another bottle of what purports to be specimens of

copra, which we will mark for identification Exhibit "BB",
226 will you please explain the conditions under which this was taken?

A. This is copra from the same experiment taken on the tenth day and represents material alternately exposed to the water and drained, that is copra from the tide water section of the tank. The water content of this particular copra had risen to approximately twenty per cent, the copra had become darker in color and was a trifle slimy, that of course has been lost as this sample was dried since that time.

Q. And the difference as here exhibited is in the color?

A. Principally in the appearance.

Q. Please state in a general way the effect on the specimen from your experimental tank contained in this bottle which we will mark Exhibit "CC" for identification.

A. This is copra taken from the same experiment on the tenth day and represents copra taken from the lower one-third of the container, which was under water at all times until the copra was taken out. It shows somewhat similar relations to the previous sample, the deterioration, however, at the time it was taken out was not as marked as in the tide water section.

Q. How soon after the copra in these bottles Exhibits "AA", "BB" and "CC" was taken from the tank did you undertake to dry it?

A. They were immediately spread out on brown paper in a warm dry room in such a way as to dry them as quickly as possible without the use of any artificial dryer.

Q. How do the conditions of these specimens compare with the conditions when taken out of the tank?

227 A. The copra sample Exhibit "AA" is practically the same. The copra marked "BB" and "CC" is in a much dryer condition than it was at that time, more or less of the appearance of decomposition has been removed by drying, otherwise it is not very different.

Q. Please examine the bottle marked for identification Exhibit "DD" and state in a general way the conditions in regard to that sample.

A. This is a sample of copra taken from the same experiment on the 19th day and represents copra above the high water level, that is copra that has never been in actual contact with the salt water.

Q. What is the condition of that copra as compared with the condition when placed in the container?

A. The water content is greater, the molds have begun to multiply rapidly, the copra is slightly darker in color, otherwise it is not greatly different.

Q. Please examine the bottle marked for identification Exhibit "EE" and state in a general way the conditions in regard to that sample.

A. This is a sample of copra taken from the same experiment on the 19th day, representing copra above the high tide level, never touched by the high water in the tank, but taken from around the

edge of the tank where the moisture condensed and ran down on this copra.

Q. What was the effect of that upon the copra?

A. The water content is considerably increased and the mold is very much more noticeable and has evidently worked through the sample, the copra is considerably darker in color and shows greater deterioration.

228 Q. Does the mold have a deleterious effect upon the copra?

A. Has the effect of increasing the freed acid of the oil, as it goes through the copra, destroys the tissue, it causes heat, and it has a very serious effect on the grade of oil produced from the copra.

Q. Here is another bottle, Doctor, which I will ask be marked Exhibit "FF" for identification, will you state what that is?

A. This is a sample of copra taken from the same experiment on the 19th day and represents the condition of the copra in the tide water area where the copra is alternately exposed to the sea water and to the air.

Q. What has been the effect upon the copra of that exposure?

A. The copra has practically the maximum water content possible and shows indications of serious bacterial decomposition.

Q. Has it had the effect of softening the copra?

A. Yes, this copra is very soft, in fact a great many pieces are in a slimy condition.

Q. Please examine this bottle, which I ask be marked Exhibit "GG" for identification, and tell us what that is.

A. This is a sample of copra from the same experiment taken on the 19th day from the lower one-third of the tank and representing copra continually submerged in salt water.

Q. What was the effect of this submergence of the copra in the salt water?

A. The water content is raised, the free acidity of the oil is higher, the copra is darker in color and it is softened, although it does not show the deterioration present in the previous sample.

229 Q. Doctor, this copra in this large jar, which I ask be marked Exhibit "HH" for identification, represents approximately the arrangement of the copra in the experimental tank used by you, does it not?

A. The copra in this bottle, or jar, represents copra from the experimental tank used and is arranged in the same manner as nearly as possible, the lower one-third of the jar containing copra actually taken from the lower one-third of the experimental tank, the middle section from the tide water copra in the tank and the top layer from the copra in the top of the tank, the copra being taken as nearly representative as possible.

Q. On what date after the water was let into your experimental tank was this simple "HH" taken?

A. On the 19th day.

Q. How long ago did you make this experiment, Doctor?

A. I took these final samples this morning, this being the 19th day.

Q. Dr., from your experience resulting from your experiment

and through your general knowledge of the subject, please state what in your opinion was the condition of the copra in the totally submerged and the tide water sections of the Nippon on the tenth and nineteenth days, respectively, after the water was admitted to the hold of this vessel which was stranded on Scarborough Reef?

A. In my opinion on the tenth day the copra in the submerged section of the Nippon, being exposed to constantly renewed salt water, was thoroughly infected with bacteria, including bac-
230 teria which are so easily killed that they could not be reproduced in this small experiment; the decomposition had probably not proceeded at that time very far, although the copra was in such a condition that it would have deteriorated at a rapid rate had it been exposed to the air. On the 19th day the decomposition had progressed, although the copra left which had not been consumed by bacterial action was probably not in any worse condition than after ten days, some of the copra was destroyed and some of the oil set free, but of the copra remaining it was probably not in any worse condition than after then days.

Q. What effect would it have on the copra after it had been in the water for ten days if upon removing it from the vessel instead of being spread out and dried it was piled up or sacked up and piled into a steamer or lighter for transportation and kept in that condition for from twenty-four to thirty-six hours?

A. As soon as the copra is taken from underneath the water, thus being exposed to the action of the air fermentation would begin at a much more rapid rate with much faster decomposition and as the decomposition of the tissue takes place the oil and celol of the copra is freed.

Q. Copra in that condition would therefore deteriorate at a much more rapid rate?

A. Yes, sir.

Q. State whether or not in your opinion the condition of such copra after being kept in that condition for thirty-six hours after being removed from under the water would be such as is
231 commonly known as rotten?

A. I think the term rotten is too indefinite to give an opinion on.

Q. Would it give off any offensive odor?

A. It would have an offensive odor even before exposed to the air that long, that is the decomposition produced under the water would be offensive, though it would be more pronounced after subjected to the air.

Q. Would the deterioration be progressively rapid after its exposure to the air?

A. In my opinion it would be unless the temperature became high enough to retard the multiplication of the bacteria.

Q. Please state if the effect of salt water on a mass of copra such as that in the hold of the Nippon would be to produce any noxious gases?

A. Any protein material undergoing decomposition gives off

noxious gases, copra is no exception and would therefore give off noxious gases.

Q. What gases would it give off?

A. It would depend on the type of bacterial infection.

Q. Did you notice, when you were on the Nippon personally, the presence of noxious gases?

A. I tested the air in various parts of the Nippon at that time and found a high percentage of hydrogen sulphate present in the air, both in the holds of the vessel and even out some distance from the vessel in the open sea.

Q. What effect would that gas have upon persons exposed to it or who were obliged to work in it?

A. It is a poisonous gas and will cause death in sufficient
232 quantity.

Q. While you were out there, Doctor, did you observe any effect of the fumes from the copra upon the men who were at work there?

A. I did.

Q. What were those effects?

A. I observed that the men who had been working down near the copra were rendered partially unconscious by the gas, at the time I was there none of them were made totally unconscious, and they complained of giddiness and loss of consciousness and I experienced the same to a less degree at that time.

Q. Besides the gases produced or released by the action of the bacteria on the copra, Doctor, please state whether or not any acids would be produced?

A. Acids were produced.

Q. What effect did that acid have in the water in the hold of that vessel upon the persons coming in contact with it?

A. It would have a corrosive action on the skin.

Q. Did you personally have any opportunity to observe the effect of this corrosive action of the acid upon the skin?

A. I did.

Q. What was it.

A. The workmen who had been exposed to this water showed irritation of the skin, in some instances even approaching actual burning of the skin, they also showed enlargement of the parts which had come in contact with the water, swelling and inflam-ation of the eyes, both from water getting into them and from gases,
233 etc., coming in contact with the eyes.

Q. Please state, Doctor, how you happened to go out to the Nippon?

A. I was informed by the Director of the Bureau of Science that there was a large amount of copra on the Nippon which was wrecked on Scarborough Reef and we had been interested for some time in the spoiling of copra under various conditions so after discussing the matter with Dr. Cox I decided that it would be a fine opportunity to investigate the spoiling of copra on a large scale, which was the sole reason for the trip to the Nippon.

Q. Dr. please state at whose request the experiment made on the copra in the tank which you have just described here was made.

A. I was told to make this experiment by the Director of the Bureau of Science, who had previously made arrangements with the representatives of Erlanger and Galinger to carry out this experiment.

Q. The Dr. Cox you referred to in your former answer is the Director of the Bureau of Science is he not?

A. At the present time he is.

That is all.

No cross-examination.

Witness excused.

Mr. THOMPSON, a witness called by the plaintiff, being first duly sworn in open court, testified as follows:

Direct examination by Mr. Fisher:

234 Q. Please state your name, occupation, and residence.

A. Edward P. Thompson, Manager of the Philippine Vegetable Oil Co., Nagtajan, Manila.

Q. The Philippine Vegetable Oil Company deal in copra and the products of copra does it not?

A. Solely.

Q. How long have you been in the employ of the Philippine Vegetable Oil Co.?

A. One year now, since it started to operate.

Q. You are the manager of their mill here are you not?

A. Yes, sir.

Q. Prior to your employment with the Philippine Vegetable Oil Co. what experience had you had with copra or its products if any?

A. Four years with the Philippine Products Company and five years with L. Schepp Company of New York.

Q. Are you familiar with the commercial values of copra, Mr. Thompson?

A. I handle about two hundred tons of it a day regularly.

Q. Mr. Thompson, you saw the tank down in the Bureau of Science grounds where Mr. Pratt carried on the experiments about which he has just been testifying, did you not?

A. I did.

Q. Please state whether or not you took samples of the copra in that experimental tank and examined specimens from that tank at that time?

A. I examined samples of the copra from the upper strata and also from the second strata but I did not see the lower strata of copra at that time.

235 Q. In what condition did you find the copra in the center strata of that tank?

A. In a high state of mold and just starting to show bacterial action.

Q. What was the commercial value of that copra then?

A. I should say that for commercial purposes the it was nil, you couldn't handle it in large quantities, there is no process by which you could handle it in large quantities, if you attempted to press it in the condition in which it would you wouldn't get anything but a sort of a slush or oose, and there is no way you could get it dry enough to run it through the press in paying quantities.

Q. Please state whether or not you found any condition of slime?

A. About thirty-three and one-third per cent. showed indications of slime or broken down tissue that would form slime as soon as any pressure was put on it.

Q. Have you personally ever had an opportunity to observe the effect of salt water on copra?

A. We receive it ever- day in a condition where it has been attacked by salt water, but never where it has been submerged in salt water for any length of time, and even copra that has been attacked by salt water where a wave has gone over the vessel and some of it run down on to the cargo or in the loading of it it immediately turns very dark and starts the mold growth and it is impossible to store it after that.

Q. Mr. Thompson will you please examine the copra in Exhibit "BB" and state what in your judgement has been the deteri-
236 oration of that copra from a commercial standpoint on account of the treatment to which it has been subjected?

A. From my point of view I should not purchase it at all for milling because it is impossible to grind it in the condition in which it is, copra must be ground before it can be pressed and the only way you could possibly grind this copra is by mixing it with some kind of a substance to make some sort of a cake, you would have to grind it with some dry substance that would form a cake, it would not cake in the condition it is in, and you can't handle it to any advantage in that way.

Q. What about the copra in this sample for shipment purposes, Mr. Thompson?

A. I should not consider it worth shipping, it would be entirely decomposed before it could possibly reach any port in Europe, where most of the shipments of copra from here are made to.

Q. Have you ever had occasion to observe what effect the wetting of copra with salt water has with regard to the temperature, particularly where it is sacked or stored?

A. It has the effect of materially increasing the temperature and if we remove sacked copra which has been attacked by salt water we immediately remove it from the sacks, if it is attacked by salt water and is left in the sacks it will burn up the sacks entirely, it causes spontaneous combustion and will consume the sacks.

Q. How many copra mills are there being operated in the Philippine Islands at the present time, Mr. Thompson?

A. One mechanical mill, that is a power mill, and probably
237 a thousand carabao mills scattered around through the provinces and a few hand mills operated by natives and Chinese.

Q. The power mill which you refer to as being the only one in the Islands is the one of which you are the manager?

A. Yes, the only one, I manage that, and before that the Philippines Products Company had a power mill but that was burned down.

Q. Mr. Thompson have you any knowledge of the disposition made of the copra which was salved from the Nippon and brought in here to Manila?

A. Some of it was purchased by Chinese, in fact the bulk of it was purchased by Chinese who took it to Malabon and layed it out on the beach there and dried it to a certain extent and mixed it up with good copra and then tried to dispose of it in that form, parts of it they tried to ring in on me, which were rejected immediately, and parts of it decayed so that they couldn't do anything with it. I understand a small part of it the Chinese out there in Malabon spread out and dried and then tried to remove the oils with their corrogated rolls, they remove the oil by running it through a corrogated roll mill they have and they failed to get any good product, it resulted in a very high acid smelly oil.

That is all.

Cross examination by Mr. Rohde:

Q. Is your last statement from your own personal knowledge or from hearsay, Mr. Thompson?

238 A. By reference you mean?

Q. Yes.

A. Partially from my own personal knowledge and a part of it by reference.

Q. What is the personal knowledge?

A. That I saw some of it at my own plant mixed with copra that they attempted to sell me and which I rejected, and the same copras were rejected by me and were exported by Sy Ciong, because they were purchased by him and they were not sold or used in the market here and they do not mill any copra, they only export so I know that copra was shipped out.

Q. Did you see that copra exported?

A. No, sir.

Q. You don't know when it was exported?

A. No.

Q. When did this copra come to your plant, that you mentioned?

A. I don't remember the exact date, but 983 sacks came to our plant—I have the date at the plant—when they arrived at the plant I recognized this copra and they were rejected by me and ordered returned at once and I was told afterwards that these same copras were being re-sacked by Dy Buncio on Calle Anloague for export.

Q. You were told?

A. Yes, sir.

Q. Then you did not have any personal knowledge of that fact?

A. Then afterwards there was some of the same copra came into our plant in other sacks and under different marks but they never

succeeded in working any of it off on us and I understood
239 from the people who sold it that it was exported, however it was not milled here in the Philippine Islands.

Q. How do you know that?

A. There is no other mill with the exception of our's that can do it, we are the only mill out here equipped for drying copra with above twelve per cent moisture, the Chinese have no equipment for doing it in their little mills nor the Filipinos. The only other mill they ever had in the Philippine Islands that was equipped for drying copra that had any great per cent of moisture was in Batangas and that mill went out of business in 1904.

Q. When and where did you see this copra from the Nippon, Mr. Thompson?

A. The first lot I did not see, the second lot I think I saw, and then I examined it daily as it was offered for sale by the custom house, they sent out notices as it was put up for sale.

Q. You saw it at the place where it was sold?

A. Yes, sir, and afterwards at other places.

Q. Where besides where it was sold?

A. Saw some of it out at our plant and then I saw some of it out at Malabon after it had been taken out there in lighters by the different Chinese that bought it up at the sales; some of it they spread out on the beach on petates.

Q. How do you know that copra was from the Nippon?

A. Because the people who purchased it told me so and by
240 looking at the copra.

Q. How many times did you see this copra which you were told was from the Nippon?

A. Once.

Q. How much of it did you see on that occasion?

A. I could not state just how much, but there was a lot of it spread out on petates on the beach out at Malabon to dry.

Q. And that is the only time you saw any of the copra from the Nippon?

A. That is the only time with the exception of what they tried to sell me that I saw any part of this particular copra which I knew came off of the Nippon with the exception of some I saw in the lighters and down along the Ferola.

Q. So the only time you saw any of the copra from the Nippon was at the sales made of it at the Custom House and at Malabon and the copra you saw mixed with other copra which went to your plant and all of the rest is what you were told by other people, is that correct?

A. And from knowledge gained by being interested in the copra business.

Q. Have you any other method of gaining knowledge of such subjects except by hearsay from other people, that is from what other people tell you?

A. Being in the copra business I am interested in what becomes of any copra shipped in here and by going to the different bodegas

241 here in the City, of which I have the entre- to practically all of them, and knowing copra from having handled it for some years—I could tell this particular copra by seeing it.

Q. But you have no peculiar faculties not possessed by other men with reference to gaining knowledge as to the shipments of cargo, have you, you can not find out in regard to shipments without being told unless you see them can you?

A. No, sir.

That is all.

Mr. Fisher: If there are any documents not formally offered used by us we offer them at this time and rest.

Proof for the Defendant.

Dr. PRATT, recalled by the defendant.

Direct examination by Mr. Rohde:

Q. With respect to the weight of copra what do you suppose is the per cent of weight gained by submersion for from ten to fifteen days?

A. Approximately ten or twelve per cent.

Q. And the copra that would be alternately submerged and drained?

A. It would approximate the same amount.

Q. And the copra not touched by the water but above the high water mark?

A. It would depend altogether upon the time, it would eventually reach the maximum water content; depending on the time, whether it had free access of air, whether the temperature would be

242 high or low, and general atmospheric conditions.

Q. But it would gain in weight?

A. Yes, slowly.

Q. Do you suppose it would reach five per cent gain within ten or fifteen days?

A. It is doubtful unless the temperature increased sufficiently, it would depend somewhat, of course, upon the distance above the water and the nature of the container as to how rapidly the water would be condensed.

That is all.

Cross-examination by Mr. Fisher:

Q. Please state whether or not the gain in weight because of the water content of the copra would not be offset by the loss of the oil product?

A. From what standpoint?

Q. With respect to the weight.

A. What conditions?

Q. The copra for instance as stowed in the Nippon?

A. The copra submerged and in the tide water section would lose considerable oil, depending on the length of the action and in time would lose all of its oil, and judging from the appearance of the copra on the Nippon I would say that a large amount of the oil had gone from the copra in that time, and on a smaller scale, less noticeable also in the experiment I made.

Q. And there would be more or less of a balance between those two factors would there not?

243 A. Yes, the loss of the oil is brought about by the breaking down of the cells, the bacterial action destroys the cell tissue and frees the oils.

Q. The amount would depend upon the length of time exposed to this action.

A. Yes, the bacterial action frees the oil, and the oil itself is also somewhat affected.

That is all.

Witness excused.

Mr. SKUPIN, a witness called by the defendant, being first duly sworn in open court, testified as follows:

Direct examination by Mr. Rohde:

Q. Please state your name, occupation, and address.

A. Max Skupin, merchant, Manila.

Q. How long have you been in this part of the world Mr. Skupin?

A. I am now away from Europe more than two years.

Q. How long have you been in Manila?

A. Now nine months in Manila, the rest of the time in German New Guinea.

Q. Have you ever had any experience with copra submerged in the sea?

A. I was engaged with the Foresythe Company, a firm which exported most of the copra from New Guinea, and we had often copra brought by schooners and little vessels, which become wet with sea water, and therefore as I was in the store I always had to take care of that copra and to dry it and like that, and then afterwards

244 we resack the copra to ship it.

Q. And copra submerged in a ship which had been wrecked, did you ever have an opportunity to see that?

A. Yes, I get that too.

Q. What was that?

A. There was once—what I saw, once was a little ship of about four tons and this little ship stranded, the copra was about two days in the water when we could get the copra out again. It was about forty to fifty bags, I don't remember more well. After two days we get the copra out and put it on the sun and dry it again then we sack it and ship it again.

Q. Do you know of a cargo which was submerged longer than two days?

A. Yes, there was in the middle of 1912 one German Lloyd

steamer, Roland, this steamer stranded, I don't know just where this place is but it is about two days from the place where I was and three days afterwards the captain came, or he sent a message, that the ship is stranded and then our firm sent out our launch and I think the Government sent out a motor boat too and some other firms to try to save that steamer and to get the cargo.

Q. Was that cargo submerged entirely?

A. It was three days when the message was received and two days to get to that place, I can not remember the name where it was, so I think it was five or six days when they began to salve the copra.

Q. How long was it under water?

245 A. At least five days when they begin to take the copra out, and then they got a lot of black boys living on the Island there to get this copra, to help them get out of the water this copra.

Q. How was that copra, in what condition?

A. I did not see that copra myself because it was the copra of another firm, and they took it then from that island and they shipped it to Marseilles.

That is all.

No cross-examination.

Witness excused.

Plaintiff rests.

Mr. Rohde: In addition to plaintiff's Exhibit "A," which is the certificate issued by Father Algue of the Weather Bureau as to the weather conditions at Scarborough Reef, I now offer the certificate of the Acting Director of the Weather Bureau, Father Algue himself being absent in Baguio at the time, and ask that the same be marked Exhibit "I."

The document introduced in evidence as Defendant's Exhibit I is in words and figures as follows:

"I Certify that the velocity of the wind at Manila was above the normal during the 9th, 10th, and 11th of May, 1913, and prevailing from the third quadrant. The sea according to the report received from the station of Iba, Zambales, was generally rough (broken, chopping and rolling sea) from the 7th to the 11th.

"After the last date, that is, during the second half of May and the whole month of June, 1913, as a consequence of the absence of typhoons, stated elsewhere, the velocity of the wind was much below the normal of the said period.

246 "The normal daily velocity of wind during May is 230 Km., while from the 12th to the end of May, 1913, it reached only to 171 Km. Similarly the normal of June is 236 Km., but the daily mean of June, 1913, was 190 Km. Its direction was also much less constant, and consequently nearly disappeared the prevalence of the third quadrant winds.

"The sea of the southern part of the China Sea according to the

reports received from Iba was generally smooth; it was moderate only on the 7th, and from 9th to 19th of June, 1913.

(Sgd.) "M. SADERRA MASO,
Acting Director Weather Bureau."

Mr. Rohde then said: I also offer in evidence a certificate of the Surveyor of the Port, Mr. Compton, showing the arrival of the various vessels from Scarborough Reef, together with the respective cargoes of copra carried on each and remarks as to the condition of such copra as to whether wet or dry, and request that it be marked Exhibit "2" for identification.

The document introduced in evidence as defendant's Exhibit 2 is in words and figures as follows:

247 The Government of the Philippine Islands.

Department of Finance and Justice, Bureau of Customs, Manila.

February 4, 1914.

Certificate issued upon request of Mr. Wm. J. Rohde.

It is hereby certified that as shown by the records of this office the following is a true and complete list of all copra, together with the names and dates of arrivals of the vessels upon which it was brought to the port of Manila, which was salved from the s/s "Nippon," wrecked upon Scorborough Reef during the month of May, 1913.

S. S. "Mindoro", Reg. 295; arrived May 20, 1913	
Dry copra	69,418 kilos
S. S. "Mindoro", Reg. 303, arrived May 23, 1913,	
Dry copra	48,250 kilos
S. S. "Mindoro", Reg. 310, arrived May 25, 1913,	
Dry copra	68,415 kilos
Wet copra	6,418 kilos
S. S. "Vizcaya," Reg. 313, arrived May 29, 1913,	
Dry copra	49,449 kilos
Wet copra	53,299 kilos
S. S. "Corregidor", Reg. 318, arrived May 29, 1913,	
Dry copra	78,149 kilos
S. S. "Mindoro", Reg. 324, arrived May 31, 1913,	
Dry copra	74,116 kilos
Wet copra	10,769 kilos
S. S. "Basilan", Reg. 328, arrived June 2, 1913,	
Dry copra	59,775 kilos
Wet copra	22,963 kilos
S. S. "Corregidor", Reg. 331, arrived June 3, 1913,	
Dry copra	39,188 kilos
Wet copra	5,378 kilos
Wet copra	9,675 kilos

248 S. S. "Borongan", Reg. 334, arrived June 5, 1913,
Dry copra ..... 14,512 kilos
Wet copra ..... 71,308 kilos
Wet copra ..... 27,346 kilos
S. S. "Mindoro", Reg. 337, arrived June 5, 1913,
Dry copra ..... 3,696 kilos
Wet copra ..... 18,371 kilos
Wet copra ..... 10,400 kilos
S. S. "Basilan", Reg. 344, arrived June 8, 1913,
Dry copra ..... 56,885 kilos
S. S. "Corregidor", Reg. 346, arrived June 9, 1913,
Dry copra ..... 63,793 kilos
S. S. "Borongan", Reg. 351, arrived June 11, 1913,
Dry copra ..... 53,547 kilos
S. S. "Corregidor", Reg. 357, June 15, 1913,
Dry copra ..... 21,327 kilos
S. S. "Corregidor", Reg. 401, arrived June 28, 1913,
Dry copra ..... 28,072 kilos
S. S. "Borongan", Reg. 383, arrived June 24, 1913,
Wet copra ..... 942 kilos
Lighters "Don Guillermo" & "Seattle", ex s/s "Nippon," Reg. 411, arrived July 3, 1913,
Wet copra, estimated..... 350,000 kilos
S. S. "Nippon", Reg. 411, arrived July 3, 1913,
Wet copra ..... 1,641 kilos

(Sgd.) WM. COMPTON,
Surveyor of the Port of Manila.

(Copy.)
fa/

249 It was then stipulated between the parties in open court that the sales of copra by the Insular Collector of Customs brought the market price thereof on the respective dates of sales as marked on plaintiff's Exhibit "K".

Defendant then read in evidence without objection the deposition of the witness, Capt. EGGERT, taken under oath upon notice to plaintiff, which deposition is as follows:

(Title of Court and Cause.)

Be it remembered that on this 26th day of August, 1913, before the Notary Public, Mr. John W. Haussermann, in the City of Manila, P. I., the depositions of Captain E. Eggert and Chief Engineer Emil Gohde were taken by agreement of the plaintiff and defendant and claimant, Oelwerke Teutonia, to be used as evidence in the above entitled cause, subject, nevertheless, to all objections as to irrelevancy, immateriality or incompetency.

ERIC EGGERT, being first duly sworn, on oath testified as follows:

Direct examination by Mr. J. H. Rohde:

Q. State your name, age, residence and occupation.

A. Eric Eggert, 35, Gothenburg, Sweden, Captain of the S. S. "Nippon".

Q. What is the last ship, Captain, that you have commanded?

A. The "Nippon" was the last ship I commanded.

Q. When was the "Nippon" in Manila Bay last?

A. The "Nippon" left Manila Bay on May 7th.

Q. With direction for what port?

A. For Singapore.

Q. Did anything unusual occur to the "Nippon" after
250 leaving the Port of Manila?

A. As soon as we left the Bay we were in rough weather, and on proceeding further the weather got worse until the next day about 4 o'clock in the afternoon when we stranded on Scarborough Shoal during a typhoon.

Q. Can you state, Captain, the longitude and latitude of Scarborough Reef?

A. Yes. (Consulting memorandum). Latitude 15 North Longitude 118 East. There were also some minutes.

Q. How long did you remain on the ship on Scarborough Reef?

A. From the stranding of the boat, between 4 and 5 on the 8th of May up till the morning of the 13th.

Q. Did you sight a ship on the 13th?

A. Yes, at daylight we saw the smoke of a ship—at daylight.

Q. What ship was that?

A. It was the Manchuria.

Q. Did the "Manchuria" come up to where the "Nippon" was lying, or near there?

A. Yes, about 2 miles off.

Q. And what happened, or what was done?

A. As soon as she came close enough we put out our boat. We put our only remaining boat which was broken into the water before the "Manchuria" had stopped, with the Second Officer and some men in it, and they started out to meet the "Manchuria."

Q. Did you and the crew go aboard the "Manchuria"?

A. Yes. Those people that were in the first boat some remained on the "Manchuria" and the boat put back to get the remaining men and the luggage. Captain Dixon of the "Manchuria" sent one of his own boats and took the men remaining. This occurred some time between 7 and 8 in the morning.

251 Q. In the morning?

A. Yes, in the morning.

Q. Did you sight another steamer?

A. Not before we were on board the "Manchuria."

Q. And what steamer did you sight after you went on board the "Manchuria"?

A. At the time I did not know what it was. As soon as it came near I saw it was a coast guard.

Q. Did you know the name of the coast guard?
A. "Mindoro."
Q. Did you receive any communication from the coast guard?
A. None whatever.
Q. Why did you leave on the "Manchuria" for Hongkong, Captain, instead of coming to Manila on the coast guard "Mindoro"?
A. I went to Hongkong because I knew I could have anything that would help me to salve the steamer and I knew that in comparison to Manila there was very slight means for the work in Manila of that class, and in Hongkong I knew all the stores that were able to undertake a work like that.
Q. Had you been in Hongkong before?
A. Yes, I was in Hongkong this year about—I can't exactly tell the date. I can look up my records.
Q. About what time?
A. In the month of March.
Q. Had you ever been to Manila before?
A. Never.
Q. Did you know that you could secure adequate salvage apparatus in Hongkong for the salving of your ship and cargo?
A. I knew.
252 Q. That you could?
A. Yes: because I knew all of the salvage working having been done from Hongkong, and I knew the means they had—salvage steamers, pumps, gear, etc.
Q. What did you do upon your arrival in Hongkong?
A. The first thing I did—it was about 5 o'clock in the afternoon—I went to the office of our agents—my owners' agents. It was then closed up so I had to proceed to the private residence of the manager. From there I dispatched a telegram to my owners.
Q. Have you a copy of that telegram?
A. I have (produces paper).
Q. Is this the copy of the telegram?
A. Yes. A copy of the telegram we sent.
Q. What date was this telegram sent?
A. On the evening of the 14th.
Q. Of what month?
A. Of May.

Judge Rohde: I ask that this paper, the telegram above referred to, be marked "Exhibit A" of the defendant Oelwerke Teutonia and that it be attached to the deposition.

Q. Did you enter into any negotiations with persons or firms in Hongkong relative to the salvage of the "Nippon" and cargo?
A. Yes. The first thing in the morning of the 15th I visited together with the Swedish Consul the Tykoo Dockyard people, the Hongkong dockyard people and went to the Mitsui Bussan Kaisha branch office, and those people sent a wire to their home office in Nagasaki.
253 Q. What, if anything, interrupted your negotiations with the firms and persons in Hongkong relative to the salvage of the "Nippon" and her cargo?

A. A wire from my owners.
Q. Have you the original wire from your owners?
A. Yes I have it here.

Judge Rohde: I ask that this telegram be marked "Exhibit B" of the defendant Oelwerke Teutonia and that it be attached to the deposition.

I also present a translation of "Exhibit B" of the defendant and ask that it be marked "Exhibit C" of the defendant Oelwerke Teutonia and that it be attached to the deposition.

Q. Captain, what are these two papers, marked "Exhibit B" and "Exhibit C"?
A. "Exhibit B" is a telegraph office copy of the original telegram I received on the 17th of May from my owners. It is in code and can be translated by anyone getting a code book.
Q. And what is "Exhibit C"?
A. "Exhibit C" is a translation of the code words in said telegram.

Judge Rohde: I now offer these two papers, Exhibit B and Exhibit C in evidence.

Q. When was this telegram received by you, Captain?
A. On the 17th.
Q. What did you do then?
A. I tried to find out when the next steamer was leaving for Manila and there was none leaving before the 20th, the steamer I took and proceeded here.
Q. And what did you do upon arrival in Manila?
254 A. The first thing I did I went to Messrs. Ker & Co., they having been appointed to look after the ship's interests.
Q. And then what did you do?
A. After having been told that things had been going on here I proceeded to the Swedish Consul.
Q. Did you go out to your ship?
A. Yes. I tried the same day to charter a steamer but could not get any. I got the "Basilan" on the 24th. I wouldn't be sure of the day. Anyway I went out there as soon as I could.
Q. And what did you do after your arrival at the ship?
A. Of course I had some people with me—the people that were going to testify to the state of the steamer, possibility of salvage, etc. The first thing I did on going on board I handed to the man in charge of the ship a written demand for having command of my ship. My signature to that paper was witnessed by the Consular certificate.
Q. Who did you find in charge?
A. Mr. Ben Taylor. He told me he was in charge of the ship by the order of Messrs. Erlanger & Galinger.
Q. And what answer did he give to your demand.
A. Of course he refused to give it up, and gave me that in writing.
Q. How long have you gone to sea, captain?
A. Since 1893.
Q. Have you had any experience in unlading and lading ships?

A. Yes. The last six years we have done that job every day in port.

255 Q. How long with ordinary equipment and requisite number of persons would it have required to unload the cargo of the "Nippon" as she was stranded on Scarborough Reef into other vessels?

A. I consider this work could have been done as she lay under the circumstances in about 8 days.

Q. Do you know what kind of weather prevailed in the China Sea from the time you left the "Nippon" on the "Manchuria" until about the first of July?

A. So far as I know there was fine weather. As a matter of fact, every time I visited the ship it was calm.

Q. Do you or do you not know, Captain, whether it was always fine or not?

A. It was always fine around here and I may think it was fine all over the China Sea. There was nothing that could induce me to think it was not fine on Scarborough Reef too.

Q. When you visited the "Nippon" on the 24th of May was she in such a state that lighters could have been loaded alongside, Captain?

A. Surely. They could have loaded any vessel alongside the "Nippon"—I mean any vessel that was not too deep.

Q. Barges could have laid alongside the "Nippon"?

A. Certainly.

Cross-examination by Mr. Cohn:

Q. Captain, when you left Manila Bay on the 7th of May how many persons were on board your vessel?

A. 37 all told.

Q. Of whom did they consist?

A. Of myself, the crew, and one passenger.

256 Q. Who was that passenger?

A. Mr. Berger, of Manila.

Q. How many persons were on board when you si-ted the "Manchuria" on the morning of the 13th?

A. 27.

Q. What had become of the remaining 10 persons that left with you on the 7th of May?

A. They were sent on shore to report the accident.

Q. When did they leave the ship?

A. They left the ship on the 9th.

Q. And by what means did they leave?

A. By one of the ship's boats.

Q. And under whose command did they leave?

A. Chief Officer Westin.

Q. What were the orders given to the Chief Officer?

A. His orders were to proceed to shore, or if he met any steamer to get picked up and communicate with shore to the effect to send somebody out to take us off.

Q. By "us" you mean yourself and passenger and crew?
A. Yes.
Q. When the "Manchuria" visited the scene of the wreck on May 13th how many of you went on board?
A. We all went on board.
Q. By "all" you mean yourself, passenger, and all the members of the crew that remained?
A. Yes.
Q. What did you take with you?
A. Just personal luggage—not all—what you could carry in a small boat—it could not be very much considering that the boat was broken and there were 27 men, the ship's chronometer and
257 ship's papers.
Q. What do you mean by "ship's papers"?
A. Register, articles.
Q. Did you take the ship's log?
A. Yes; that is the first thing I take.
Q. That is the first thing you take under what circumstances?
A. Under any circumstances of accidents to the ship, because it is the official record up to the time an accident happens.
Q. Do you mean to state, Captain, that in the event of any accident to a ship, no matter how slight, that the ship's log and register and articles are taken ashore?
A. The ship's log on any occasion has to be brought before the Swedish Consul.
Q. How about the register and articles?
A. Of course not.
Q. Under what circumstances do you take ashore the ship's articles and register?
A. When I leave the ship myself I have, of course, to take those papers with me.
Q. Every time that you leave the ship?
A. No. Every time when I leave it stranded as she was. If I go on shore and try to get means for taking my ship off the ground I have to prove what ship it is and all that. In the meantime a gale may come up and the ship be torn off the rock and destroyed and the papers lost.
Q. You say, Captain, that "I went aboard the "Manchuria" in order to go to Hongkong"?
A. Yes, I did.
Q. Do I understand that if the "Manchuria' had been
258 headed for some other port you would have declined to go aboard of her?
A. I think I would have. Then I was determined to go to Hongkong for the reasons before mentioned.
Q. What were the conditions prevailing aboard the ship from the time that she stranded until the "Manchuria" arrived?
A. The first night there was very bad sea and high wind. The ship was thrown up all the time on the reef and bumping. Seas were washing right over all the time. Couldn't leave in the boats if we had tried to. The next morning was also bad, but a little

better. It became so much better that we could send the boat off about 11 o'clock in the forenoon by using precautions, oil, etc. The third and fourth day the weather was fine.

Q. When you sent off the boat on the morning of the 9th how many boats had you left on board?

A. Only one and that one was broken.

Q. Do you remember attending a conference at the residence of the Vice Governor after your return to the City of Manila from the City of Hongkong?

A. Yes I do—I remember.

Q. Do you remember the statements made by you on that occasion in reply to the questions of the Vice Governor?

A. As far as I remember there was no statement whatever given on my part.

Q. So far as you remember you did not make any statement at all on that occasion?

A. There might have been some questions. I do not remember just what I said.

Q. Do you remember being asked on that occasion whether
259 you regarded with relief the appearance of the "Manchuria" and was glad to leave your vessel?

A. I do not remember that.

Q. Do you remember that in reply to such question you then and there stated that after the trying time that you had had on board of the "Nippon" you were mighty glad to get off of her?

A. I would not deny it.

Q. You will not deny that you were mighty glad to get off?

A. No.

Q. And do you now admit that you were mighty glad to get off the "Nippon"?

A. We were all mighty glad.

Q. Why were you mighty glad?

A. Chiefly because my crew had insisted on leaving the ship in some way, by building rafts, or in that boat of ours. And secondly because of the uncertainty. We did not know if our boat had reached shore. The scene of the accident was quite out of the track of any vessel so it was quite natural when we saw that ship coming up we were glad to get into communication with the outer world.

Q. You say that the crew had insisted on leaving the ship?

A. They were not insisting upon it because they cannot insist against the master of a ship. But they would like to get off.

Q. Why were they discussing the question?

A. Because they considered it better to leave the ship and reach land rather than stay on the ship, not knowing if the boat had reached land or not.

Q. They considered it better for what purpose?
260 A. Being safe.

Q. You mean better from the standpoint of safety of their life and limb?

A. Yes. To their lives.

Q. You say that the Coastguard Cutter "Mindoro" did not communicate with you upon its arrival?

A. I did not have a word with anybody on board the "Mindoro". Neither did they with me.

Q. With whom did they communicate?

A. I heard somebody from the "Mindoro" crying into a megaphone over to the Captain of the "Manchuria".

Q. Where were you at that time?

A. I was on the upper bridge of the "Manchuria".

Q. Where was the Captain?

A. On the same bridge.

Q. You did not hear what was cried?

A. Partly.

Q. You were not very much interested in what was cried?

A. Not exactly.

Q. Did the Captain of the "Manchuria" reply to these cries?

A. Yes he did. As a matter of fact the "Mindoro" was called alongside the "Manchuria". She did not attempt to come over by her own accord.

Q. Where did the "Mindoro" go of her own accord?

A. I don't know. When Captain Dixon had got the "Manchuria" on full speed for Hongkong the "Mindoro" hove in sight around the reef from the south side.

Q. You don't know where she was going?

A. Of course I knew she was going to the reef when I saw her.

Q. What part of the conversation between the Captain of the "Manchuria" and "Mindoro" did you hear?

261 A. I heard the demand from the "Mindoro"—"Have you taken off the crew?" The answer was "Yes". "Where are you taking them?" "To Hongkong".

Q. Is that all?

A. I heard also Captain Dixon say he had received an order for the captain of the "Mindoro" to proceed to Santa Cruz and take off the crew and to remain and bring them away from there. That is all the communication I know about between the "Mindoro" and the "Manchuria".

Q. What did the "Manchuria" then do?

A. We proceeded to Hongkong full speed and the "Mindoro" went around the rock. I can't say what she did. After we saw the boat we had left adrift and the captain of the "Manchuria" asked if he should take it up but it was so badly broken that it was no use.

Q. You refer now to the ship's boat of the "Nippon"?

A. Yes.

Q. Did the captain of the "Mindoro" announce that he had been dispatched by the Insular Government of the Philippine Islands to render such assistance as might be required of him?

A. No.

Q. You are positive he did not?

A. I mean, to my knowledge he did not.

Q. Did the Coastguard Cutter "Mindoro" assist in transferring

the baggage of the crew from the "Nippon" to the "Manchuria", or from the "Nippon" to shore?

A. No. From the "Nippon" to shore I heard from my chief officer they had taken some baggage off? I don't know anything about it personally.

262 Q. Was some of the baggage of the crew left aboard the "Nippon" when you went aboard the "Manchuria"?

A. Yes.

Q. Considerable of it?

A. A considerable lot, yes. I should say more than half of everybody's belongings.

Q. Was there any communication between the Captain of the "Manchuria" and the shore?

A. I think he sent wireless stating that he had taken off the crew and taken them to Hongkong. I have seen those copies later. I didn't know at the time.

Q. Did the captain of the "Manchuria" receive any messages from shore?

A. He had received the order for the "Mindoro" to go to Santa Cruz.

Q. How do you know?

A. Captain Dixon told me. He told me he had received a message.

Q. What message?

A. To order the "Mindoro" to go to Santa Cruz and take off the crew. I think he received it after we were going full speed because those messages came after he had started for Hongkong. Then he made flag signals to the "Mindoro" to come alongside.

Q. When had he received the message from the shore that the "Mindoro" was coming?

A. I do not know if he received any such message.

Q. He couldn't communicate that message unless the "Mindoro" was coming to the scene of the wreck could he?

A. Of course not.

263 Q. Then you do not mean to pretend Captain that the message was not to the effect that the "Mindoro" was coming to the scene of the wreck?

A. I do not think it was as a matter of fact I do not know. The only thing I know was it was to order the "Mindoro" to proceed across to take off the remainder of the crew.

Q. Was that message communicated to you by Captain Dixon?

A. To me when those flags went up after we were on full speed to Hongkong.

Q. Captain Dixon had not previously reported to you that he had received such a message?

A. No.

Q. Did you see the message sent by Captain Dixon to the shore?

A. I have seen some copies here in Manila since I arrived here.

Q. Did you see these while on board the "Manchuria"?

A. No.

Q. Do you remember, at the conference previously referred to with

the Vice Governor, that you then and there made a statement that Captain Dixon's message had been shown to you before it was sent?

A. No, I do not remember it.

Q. Did you make such a statement on that occasion or did you not?

A. I think I did not.

Q. When you reached Hongkong on the "Manchuria", captain, did you have any communication about the plight of the "Nippon" with any person other than the ship's agents and the docking concerns that you have named?

A. In Hongkong?

Q. Yes.

264 A. No.

Q. Did you have any interviews with newspaper reporters?

A. Yes I had. As a matter of fact one came aboard the "Manchuria" before I left.

Q. Did you state to them the plight and condition of the "Nippon" at the time you left her?

A. Yes.

Q. Were those interviews published in the Hongkong papers?

A. Yes; of course there was a lot of exaggeration. I even visited one of their offices and told them not to write such exaggeration.

Q. Do you know the names of the persons with whom you had these interviews?

A. No sir.

Q. Do you know the names of the persons whom you asked not to exaggerate?

A. No. I know the name of the paper.

Q. What paper?

A. It was the China Daily Outlook.

Q. Is that the only paper?

A. There was another paper wrote something about it but I had no interview at all.

Q. No interview of any kind?

A. Except the first evening when I gave them the details.

Q. But you had no interview after the publication?

A. No.

Q. I call your attention, Captain, to the language in Exhibit "C", which you say is a message from your principals, in which they state: "If not total loss let crew remain until further notice".

265 Did you comply with this request?

A. Yes. They remained in Hongkong until they got orders from the owners to go.

Q. You interpret this message to mean: let the crew remain at Hongkong?

A. Yes, of course. They knew the crew were in Hongkong.

Q. Did they know that all of the crew were in Hongkong?

A. I sent the message to them.

Q. Where is the message?

A. I have it in my records.

Q. Then you have not here exhibited all of your messages to the owners?

A. No.

Q. Where are they?

A. I have them in my place.

Mr. Cohn: I ask that they be produced.

Mr. Cohn: Counsel for plaintiff insists upon the production of all of the correspondence between Captain Eggert and the owners relative to the stranding of the "Nippon" and its salvage, advising that the use of the deposition will be objected to unless same are produced.

Q. Captain, if your purpose in leaving the "Nippon" was to go to Hongkong for the purpose of arranging for her salvage why did you not leave some of your crew on board?

A. How could I leave some of the crew on board when there was no attendants? There could be a gale at any time and the ship would have slipped off and broken to pieces. I first of all was responsible for their lives.

Q. Then all the souls on board the "Nippon" left for the purpose of saving their lives?

263 A. Absolutely.

Q. How much experience, Captain, have you had in unloading vessels on reefs 200 miles or so from shore?

A. I have had none.

Q. You have made the statement that it would require 8 days to unload the "Nippon" with ordinary equipment suitable under the circumstances that the "Nippon" then was. What do you mean by suitable equipment?

A. By ordinary equipment I would mean sufficient lighters, or boats, to take the stuff. Secondly, 4 gangs of men of sufficient number; one pump in each hold to keep the water level far enough down while the copra was discharged; and baskets or big tubs, or anything like that.

Q. That is your opinion of what would be suitable equipment?

A. I think that would be suitable.

Q. On what do you base that?

A. It was my own opinion—nobody else.

Q. Is that based upon any experience?

A. I would not say. I would say that my experience is that you could easily have held the water back by pumping and discharge at the same time.

Q. Did you attend a conference, Captain Eggert, after your return to Manila from Hongkong, at this office in the company of Mr. Strebel, of Struckman & Co., of Mr. Brekwalt, and of Mr. Wegner and Mr. S. Erlanger?

A. Yes I did.

Q. Were you present during that entire conference and interview?

A. I think I was because I came with the gentlemen and I left with them.

267 Q. Do you remember that at that conference ways and means for the unlading of the cargo of the "Nippon" were discussed?

A. Yes I think so.

Q. Did you on that occasion state what would be suitable and adequate means for unlading that cargo in your opinion?

A. Not so far as I remember.

Q. The subject-matter of that conference and interview was whether or not the firm of Erlanger & Galinger, as salvagors of the ship, would relinquish the salvage to the owners and underwriters of the ship and cargo, was it not, and, if so, upon what terms?

A. Upon what terms, yes.

Q. It was stated at that interview, was it not, that in the event of such relinquishment you proposed to use the same persons then in the service of Erlanger & Galinger, and the same equipment, was it not?

A. No.

Q. You are positive that it was not?

A. I think I am. I did not hear it.

Q. Is it not a fact that you and your associates insisted that Erlanger & Galinger must influence the persons in their employ to remain on the ship?

A. I think it was quite the contrary. I know very well I did not take any especial part in that discourse.

Q. Were the methods of lading the ship discussed at that conference?

A. Very little, if I remember right.

Q. Were not you and your associates asked by what methods you would unlade the ship, and did you and your associates
268 not reply that "That was your secret?"

A. I can not say neither yes or no to that question.

Q. Why can't you say yes or no to that question?

A. Because I do not remember exactly as you put it there.

Q. How do you remember?

A. My remembrance of that conference was only the terms on which you would discontinue the salvage operations or give them over to us or let us partake in it.

Q. What was discussed at that conference regarding unloading the ship?

A. There might have been mentioned pumping and lightering, but that was not the principal thing at the time.

Q. Did you attend a subsequent conference between the owners, underwriters and salvors and yourself at the office of Messrs. Bruce, Lawrence, Ross and Block?

A. I did.

Q. That was subsequent to the interview at this office?

A. I don't think so. That interview we had up there was solely for the purpose of Mr. Cohn stating the means that had been taken and were taken for salving of the ship and cargo.

Q. There was a written summons to that conference, was there not? That is, you were all invited to attend by written letter?

A. Yes I think there was.
Q. And that letter set forth the purposes for which it was called?
A. Possibly.
Q. But you received a copy?
269 A. Yes.
Q. And you attended the conference?
A. Yes. I have a copy of your statement at that conference.
Q. Does that copy correctly state what then and there occurred?
A. Yes.
Q. Do you remember that at that conference criticisms, suggestions or advice were invited on several occasions?
A. I know it was.
Q. By the salvors?
A. Yes.
Q. Did you give any criticism, or suggestion, or advice?
A. I did not, and I think I was not entitled to do it.
Q. Did any other person give any criticism, suggestion or advice?
A. No. I know Mr. Lawrence asked you one question. That was, if you had everything you wanted, and as I remember it you said you did not want any equipment.
Q. Didn't want any equipment?
A. I don't remember the word.
Q. But you know I called for criticism, suggestion and advice?
A. I know you said you had everything you wanted.
Q. Captain, do you know whether at the time of the stranding of the "Nippon" the members of your crew had insurance upon their personal effects?
A. Yes there is what we call free insurance for all our ships, but the amount of this insurance is only paid in the case of a ship being a total loss. And that insurance is not paid at all during the year. It means that if you are on board 15 days there is a reduction on the premium and if that occurs during the year there is no remuneration whatever for your effects.
270 Q. Now, in the event of a total loss, the collection of that insurance by the members of the crew requires the filling out and sending of certain documents and claims, do they not?
A. I don't understand.
Q. The members of the crew, when there is a total loss of the vessel, have to make proofs of loss—have to fill in an application blank for the amount of the policy?
A. I can't say because I never had a total loss.
Q. Is it not a fact that the crew, on board the "Manchuria", and between the Scarborough Reef and Hongkong, were engaged in making out applications for insurance upon their personal effects as for a total loss?
A. Not to my knowledge. As a matter of fact the men mentioned nothing to me during their stay in Hongkong about it.

Redirect examination by Mr. Rohde:

Q. Captain, did you or did you not leave the "Nippon" with the intention of returning and the hope of recovering your ship and cargo?

A. I left the "Nippon" with the full intention of returning to the ship and try to recover her, and I discussed that matter during the three days we were on the reef with every member I could see in the crew, and with the passengers. Everbody knew as soon as I put my foot on the "Manchuria" it was for the purpose of getting assistance. Captain Dixon knew, his officers knew it and his crew knew it.

Mr. Cohn: You have not fully replied to the question asked you by counsel for the defendant, which is whether you had
271 the hope of recovering the ship.

A. I had the hope if the weather continued fine.

Mr. Cohn: If you had that hope why didn't you leave some of your crew on board?

A. Because the hope would not justify me leaving any of the crew on the ship.

Mr. Cohn: Your hope was so slight it did not warrant your leaving anybody on board?

A. A hope is always slight. I mean to say your hope will never justify you to risk another man's life, even if you have a very good foundation for your hope. Life comes before property.

Mr. Cohn: Just what did you mean by "hope"?

A. I mean to say that if the weather continues fine there is no risk, but if there is a typhoon or gale we will be worse off and the ship will be smashed and the crew perish. That is what I mean by a "hope" in this occasion.

Mr. Cohn: What you mean, Captain, is that you were going to Hongkong and if you could find somebody that was willing to go out and look for your ship, and if your ship was still there, that you would undertake to salve her if you could?

A. Of course.

(Sgd.) T. EGGERT.

272 Deposition of E. EGGERT continued on August 27th.

Recalled for further cross-examination.

Mr. Cohn: Captain Eggert, have you brought with you the further correspondence between yourself and your owners relative to the stranding of the "Nippon" and her salvage in addition to Exhibits "A", "B" and "C"?

A. No, I have not, Mr. Cohn.

Q. Why not?

A. I do not consider myself justified in exhibiting those things unless I have the orders from my owners to do it.

Q. Why, then, have you consented and voluntarily exhibited Exhibits "A", "B" and "C"?

A. I exhibited, especially "A", because it was proof that I intended to come back to the ship, and as I understand it was the principal question. I took that on my own risk to exhibit it.

Q. And your refusal to exhibit the remaining correspondence is based upon your judgment that the said correspondence does not constitute such proof?

A. I mean to say that it would be nothing of great importance and that neither the telegrams nor the letters can be of any assistance to me showing that I intended to come back or not. Because they are simply business telegrams.

Q. You have referred in your last answer to your own interests and benefits to you. Have you any interest in the subject matter of this litigation?

A. I do not quite understand your question.

Q. You have stated in answer to the last question that your reason for not producing the additional cables and correspondence
273 on the subject of the stranding and salvage of the steamer "Nippon" was because there is nothing therein contained which would be of particular benefit to you. Have you personally any interest in this case, in which Erlanger & Galinger is plaintiff and the Swedish East Asiatic Co. and others are defendants?

A. I have the interest of being master of the ship. That is the only interest I have. That means to protect the interests of my owners and underwriters.

(Sgd.) T. EGGERT.

The exhibits referred to in the testimony of the witness E. Eggert as "A" & "C" are as follows:

274 EXHIBIT "A."

Copy of Telegram Sent on the 14th Day of May, 1913, to the Swedish East Asiatic Co., Ltd., of Gothenburg.

Nippon wreck during typhoon eight May Scarborough Shoal latitude 15 longitude 118 probably total wreck bottom seriously damaged ship full of water Chief Officer and nine men took to the boat for rescue landed twelfth Luzon mail steamer Manchuria saved Captain and remaining crew morning thirteenth. Arrived Hongkong tonight wreck on edge of reef, will probably slip off and sink by first gale Captain arranging to visit wreck and attempt salvage.

EGGERT.

275 EXHIBIT "C" to Deposition of Eggert.

03 00 00 00 97/90	"Nippon" transl following Scotts Code.
icvuj ulniz	all telegrams
strybele	referring to this Steamer
	are
materiosa	intended for
icyag oprum	and must be
komnenen	forwarded to
	Eggert
patraberis	without further notice
terziario	Please communicate the contents of this

	telegram to the person *maned* for which it is intended
madentium	we are informed that
utusz ofweb	vessel has been
py (*t*) ritra	seized as a prize
igyer ofich	by Government
utlur ofzda	underwriters have
uthir okuvk	requested Llo-ds' agents
cmwyr umypa	Manila to
ramponner	protect our interest
	and
mauricand	their (his) interests
isysa okuvk	consult Lloyds agents
theronarca	telegraph what you can do
mauerspalt	look after our interests
scivolando	report upon salvage prospects
ogser onbix	if not total loss
	let
fraldejar	crew remain
vasilhag (vasilhame)	until further notice
ogowy onbix	if total loss
276 dobacco	obtain certificate
thanregen	telegraph as soon as possible
ployur	full particulars.

277 Defendant then read in evidence without objection the deposition of the witness, EMIL GODE, taken under oath upon notice to plaintiff, which deposition is as follows:

(Title of Court and Cause.)

Direct examination by Mr. Rohde:

Q. State your name, age, residence and occupation.

A. Emil Gohde, 57, Trellborg, Sweden, Chief Engineer.

Q. What ship were you engineer of last?

A. "Nippon."

Q. Were you on the "Nippon" when she stranded on the Scarborough Reef?

A. Yes.

Q. Have you any experience in the unloading of cargoes on stranded ships and the salving of ship and cargo, Mr. Gohde?

A. Yes. I have been the leading man for salving ships and discharging cargo on the coast of Sweden about a mile from shore. There was one steamer, a big mail steamer, paddle steamer. I took off the rock. It had 23 holes in the bottom. We all mended up from the inside of the ship. Before we did that we discharged 250 tons ballast and took all the wood lining from the bottom—that was a single bottom ship.

Q. From your experience, Captain, and knowledge of that class of work, can you tell how long it would have required a sufficient

number of men with proper tools and apparatus to discharge the cargo of the "Nippon" as she lay on Scarborough Reef, into other craft or vessels?

A. Yes. With lighters on both sides for each hold, and
278 the ship's winches and gear and steam from outside lying steamers, I consider that ship could be discharged and lightered up from the ground in one week. I could have done that myself with proper gear.

Q. What would you consider proper gear?

A. The ship's derricks and winches and tubes, baskets, grabbers.

Q. What do you mean by grabbers??

A. They are when you lower them down they open out and when you hoist them start to close and they get full with the cargo when they close.

Q. Do you mean the same implement that is used in dredging in rivers?

A. Yes, they are about the same. They use them for coal and such cargo, and I have seen some here.

Q. They are to be found in Manila?

A. Yes. I have seen some in Manila.

Q. Are they in Hongkong?

A. Yes, in every seaport you can get some.

Cross-examination by Mr. Cohn:

Q. Did you see the grabbers that were used on the "Nippon" by the salvors, Erlanger & Galinger?

A. No. I saw some lying here.

Q. You do not know how those grabbers compared with those that you would have used yourself?

A. I don't know; I never saw them used on the "Nippon."

Q. For aught that you know the grabbers that were used might be the same as you would have used yourself?

A. No.

Q. Is there any difference between the salving of a ship
279 one mile from shore and 200 miles from shore?

A. I do not see any difference. Besides, when we were salving that ship every 2 or 3 days we had bad weather—blowing and some sea.

Q. What was the cargo of that ship that you refer to?

A. It was stone—big stones, some of them weighed half a ton—250 tons.

Q. It was without any cargo?

A. Some loose stones what we call limestone in the afterhold.

Q. Is there any difference between the salvage of a stranded vessel that is full of cargo and the salvage of a stranded vessel that is only in ballast?

A. I don't think any difference when you can get out the cargo as easy as you could the "Nippon." We had to take the deck out and then get it out of the bottom.

Q. Have you had any experience with Filipino labor?

A. No, but I have seen that they are very lazy.

Q. Do you recognize any difference between the salvage of a ship a mile from the coast of Sweden and the salvage of a ship whose nearest shore is the Philippine Islands, in the matter of labor?

A. There may be some, but instead of having a dozen men in Sweden you can have 50 here. They would cost the same.

Q. Do you say that of your own knowledge?

A. Yes, I have heard people say what the pay of a man here is and I know what they pay in Sweden. And I have heard some people say there were over 100 men on the "Nippon" working cargo, and I had only 18 men.

Q. You do not know how many men there were on board the "Nippon"?

280 A. No, I do not.

Q. What was the condition of the "Nippon" when you left her?

A. She was about half full of water, but the sea was calm. My idea was that it was very easy to salve the ship and the cargo with proper gear and steamers.

Q. You hated to leave the ship on that account?

A. I did not like to leave the ship. When they went away we had no boat to go away in case of bad weather. We wanted to go to Hongkong and the Captain promised to go out again.

Q. Who urged you to leave the "Nippon"?

A. Well, I left on order same as the others.

Q. Whose orders?

A. Captain's orders. The sailors and firemen they were discussing that question every day that they wanted to leave the ship and get ashore so I even had to quiet them down.

Q. Why did they want to get ashore?

A. They wanted to save their lives. We didn't know the weather in the China Sea. We could have expected a typhoon in a couple of days and very likely the ship would have gone into the sea.

Q. Let us come back to the question. What was the actual condition of the ship at the time you left her? How much water and how many holes?

A. I don't know how many holes. I saw her in drydock in Olongapo. It was very little. We could not try to pump her out.

Q. Were there any rocks from the reef in your engine room?

A. No. There was some water coming up when I left—on

281 the starboard side of the dynamo engine, coming up about 2 feet high.

Q. There were no rocks?

A. Not that we could see above the platforms.

Q. How high are the platforms above the bottom?

A. About 2 or 3 feet from the tank top. And what I saw in the drydock in Olongapo there had been no rocks in her.

Q. You say there was water in the holds. In how many holds?

A. In all the holds.

Q. And the vessel had watertight compartments?

A. Yes, it was supposed to be watertight. I never tried them.

Q. How long had there been water in all of the holds?

A. The water commenced to come in the holds a little after we struck. We left the engine room about 5 minutes after the vessel struck.

Q. How long did it take the vessel to fill?

A. I could not say exactly. Something like 3 or 4 hours.

Q. On what do you base that opinion?

A. I saw it, but I didn't look at the clock or the watch, but it was before dark.

Q. It seemed like 3 or 4 hours to you?

A. Yes. I know it was high up before dark.

Q. What depth of water was there in the vessel when she was completely filled?

A. It was just on top of the condenser in the engine room. That would be something like 8 feet from the platforms in the engine room, 10 feet from the ship's bottom—between 9 and 10. At high water it was about that high. With lower water it was lower.

Q. The vessel had been filled from 3 or 4 hours after she
282 struck until you left the vessel?

A. Yes.

Q. On your voyage from Scarborough Reef to Hongkong on board the "Manchuria" did you meet any of the passengers of the "Manchuria"?

A. Yes, several.

Q. Did you meet Mr. E. J. Haborer?

A. No, I do not know any of the passengers.

Q. Did you make the statement to any of the passengers that the vessel was a total loss?

A. No, I never spoke to anyone about that. There was a man that somebody told me was a newspaper reporter came and asked some questions. I do not remember what he asked, but I showed him to the Captain.

Q. Do you remember what you said to him?

A. Nothing at all.

Q. Did you assist any of the crew in making out applications for insurance on their effects?

A. No, sir. Never knew about such an application. My belongings I intended to take away when I got back, but when I did get back all was gone. That was in Olongapo.

Q. You didn't take your personal belongings with you when you left the ship?

A. Some. Some clothes.

Q. Why didn't you take them all?

A. We didn't have time. We had to take what we could in one small boat.

Q. What limited your time?

A. Because a mail steamer was waiting for us, telling us to come as soon as possible; they would not wait. The Chief Officer
283 of the "Manchuria" was on board the "Nippon" telling us to come if we wanted to go on board the boat.

Defendant then read in evidence, without objection, the deposition of the witness, CHAS. BROWN, taken under oath upon notice to plaintiff, which deposition is as follows:

(Title of Court and Cause.)

Be it remembered that pursuant to the Notice and Affidavit hereunto annexed and on the 2nd day of September, 1913, at the offices of Southworth, Hargis & Springer, at No. 50 Escolta, City of Manila, Philippine Islands, before me, J. H. Jordain, a Notary Public in and for the City of Manila, duly appointed and commissioned to administer oaths, personally appeared Chas. Brown, a witness for the defendants in the above entitled action now pending in said Court, who being by me first duly sworn, was then and there examined and interrogated by Wm. J. Rohde, of counsel for said Defendants, and by Chas. C. Cohn, of counsel for said Plaintiffs, and testified as follows:

Direct examination by Wm. J. Rohde:

Q. State your name, age, residence and occupation.
A. Chas. Brown.
284 Q. State your age.
A. Sixty-one (61) years.
Q. State your residence.
A. Manila, P. I.
Q. Your occupation?
A. Sailor.
Q. How long have you been in Manila?
A. I came here with Dewey.
Q. Do you know the Swedish steamer "Nippon"?
A. Yes, sir.
Q. Do you know Messrs. Erlanger & Galinger?
A. I have never seen them out there; the only time I saw them was when I came back here.
Q. Did you do any work on the "Nippon"?
A. Yes, sir.
Q. When?
A. I got out there in May and came back here in July.
Q. What work did you do on the "Nippon" and where was she when you did it?
A. She was on Scarborough Reef.
Q. What was your work?
A. My work was stevedoring work.
Q. What cargo was on the "Nippon" when you reached there?
A. Copra and general cargo.
Q. What was the situation of the vessel?
A. The situation of the vessel was such that she could be off the Reef in ten (10) days time if we had gears—I mean if we had wreckers' gears, boilers, pumps, anything that is included in the wreckers' business.
285 Q. How did the ship lie, Mr. Brown?
A. She—I think she—well, Southwest Northeast—no the

monsoon comes from the Southwest—I don't know just how she did lay.

Q. Did she have a list of any consequence?

A. No, just a little bit.

Q. What was the condition of the copra when you came to the vessel?

A. The copra was alright when I came to the vessel.

Q. Who was in charge of the work there?

A. Captain Anderson.

Q. What occupation had Captain Anderson besides attending to that wreck at that time, do you know?

A. He was in charge. He gave the orders whatever to be done.

Q. Was he a Captain of a vessel?

A. He got leave from the Coast Guard boat "Mindoro" as Captain. He is the man that engaged me.

Q. Were there other Coast Guard people there?

A. Everybody.

Q. Do you mean to say that everybody there was from the Coast Guard Bureau of Manila, Philippine Islands?

A. Yes sir, except me and Chas. Johnson. I only worked there only one day and the next day Captain Anderson asked me if I wanted to go out to the "Nippon". He promised me Two Thousand (P2000.00) Pesos if the boat got into Olongapo.

Q. Was that when Captain Anderson was still in command of the Coast Guard Cutter?

A. No. I don't know about that. I know he came to me—I just went to work in the Coast Guard, I said "What is in it?" he said "I tell you if the ship gets into Olongapo I will promise you
286 Two Thousand (P2000.00) Pesos." I said "Alright, I will come out there".

Q. How old a man is Captain Anderson?

A. I guess he should be about thirty-four (34) or thirty-five (35) years.

Q. Do you know whether Captain Anderson had any experience in wrecking vessels?

A. Not that I know.

Q. What was Ben Taylor doing there?

A. Nothing except sitting down and look wise. A muchacho, that is what Captain Anderson told me "he is only a muchacho here", that is all I know.

Q. What implements, Mr. Brown, had they there for taking the cargo out when you first came there?

A. When I first went out they had twelve (12) or fourteen (14) big baskets from Manila to the ship—just common baskets but big ones, holding about five (5) piculs.

Q. And what other implements?

A. On the way going out—the baskets—I put straps in them so they won't break.

Q. You did this on the way going out to the Reef?

A. Yes, on the "Mindoro," Coast Guard Cutter.

Q. What other implements or tools had they there for taking off the cargo?

A. That is all.

Q. What other tools came later?

A. Well, I guess about a month later, about eight days before the ship got off they got two (2) "clam-shells". They had the pumps working on the steamer at the time I got there. We had one pump working—six (6) or eight (8) inch, I forget
287 which. It was working in the bunker hatch.

Q. Afterwards they had more pumps did they?

A. Yes, we had more pumps, they came one after the other.

Q. How much cargo or copra was taken off the first day that you were there? Do you remember, about?

A. I don't know the first day I was there. I think they took out about fifteen (15) or sixteen (16) hundred sacks, piculs.

Q. That is the first day you were there?

A. Yes sir.

Q. This copra was in sacks on the ship?

A. No sir.

Q. You put it in sacks?

A. Yes sir, we had to put it in sacks.

Q. The second week, how much did you take off? Do you know?

A. I cannot tell you that. I was down below from No. 1, No. 3, and No. 4. Only myself, except Taylor, Anderson, Rutlege and Flor were there. Of course, now Flor and Rutledge did nothing whatever with the cargo. They only thing they had to do was pump it, pump it, pump it was all you could hear, but they didn't pump.

Q. What vessels were there to receive the cargo of the "Nippon" after it was taken out of the "Nippon"?

A. We had the "Borongan", the "Mindoro", the "Corrigedor" and the "Basilan".

Q. How far did these vessels lie off from the "Nippon"?

A. I guess about three hundred (300) or four hundred (400) yards. I know we had a line fast to the ship and put the
288 cargo in a scow and took it out alongside and put it in the Coast Guard boats.

Q. What kind of a scow did you have?

A. We had a big navigation scow, a Bureau of Works scow.

Q. When did that scow reach the "Nippon"?

A. She was there before I got there. I do not know when she went out.

Q. Is that the only scow you had there?

A. That is all.

Q. At what distance did the ships lie off during the night time?

A. At the same place.

Q. How was the copra put into the sacks?

A. With shovels.

Q. The men right in the hold on the copra shoveling it into the sacks?

A. Two men hold the sack open and put it in.

Q. They were standing on the copra?

A. Yes and had a man there to sew it up.

Q. Have you had any experience in taking cargo out of ships or in wrecking?

A. Yes sir.

Q. Considerable, Mr. Brown?

A. Yes sir.

Q. What was it?

A. I wrecked the "Hooker" between Corrigedor and Caballo, but she is gone now. I helped to wreck another ship called the "Albatros" that belonged to Glasgow. I helped wreck another ship called the "Frederick Belling", belonging to Bath, Maine,
289 the biggest American sailing ship afloat at that time.

Q. According to your opinion, Mr. Brown, how should that copra have been taken out of the "Nippon"?

A. It should have been taken out in bulk.

Q. By what instrumentalities or tools?

A. Instruments.

Q. What tools should have been used to take that copra out?

A. One way. That is by "orange peel" because the men below—the smell is so great—

Q. (Interruption by Judge Rohde:) You mean "clam decks".

A. No. Clam decks are alright so long as you have water.

Q. Could these orange peels be had in Manila?

A. Yes sir, there is plenty of them here.

Q. And could clam decks have been had in Manila?

A. Yes sir.

Q. Using orange peels and clam decks as you call them, how long would it have taken to take that copra out of the "Nippon"?

A. If we had had them there when I went out there it would not take a week to take it out, but we didn't have them.

Q. Would that have required also other scows to lay alongside the ship?

A. Certainly. If you want to discharge—if you want to get the ship off you want to discharge *w*uick, but we did not have it.

Q. Were the hatches closed, Mr. Brown, during the first days that you were there, or some of them?

290 A. No sir. Open up every hatch, everything open.

Q. Were they closed when it rained?

A. No sir.

Q. Did it rain at first?

A. Yes, it rained, but there was water down below and it didn't make any difference if it did rain.

Q. Was there any of the discipline observable in the work that you, as a sailor, are used to on ship-board, or in such work as taking the cargo out of vessels, Mr. Brown?

A. I cannot understand the question.

Q. You know on ship-board there is some discipline going on, people that ought to know what to do and people to work and do what they are told to do; did you observe any of that?

A. Oh, yes. Captain Anderson was the Master and was in charge of the salvage work and whatever he told me I did.

Q. Did the people there seem to know what they were doing?

A. Some times.

Q. And some times not?

A. Well, I know one instance in Hold No. 3 I was down below discharging the cargo, and Mr. Rutledge and the other shovel engineer called me up and said "Mr. Brown stop your work, we want to start pumps down here" and I said "leave them get the cargo out and then get the pumps down" and he said "no, the pumps got to go down now" and he put two pumps down, I think a ten (10) inch and a twelve (12) inch—I cannot say exactly, but one of them I think it is a twelve (12) inch, the way it looks to me—of course I am no engineer or anything like that.

291 Q. How was the weather during all the time you were on the "Nippon"?

A. It was alright.

Q. Was the weather so that a ship might have lain alongside the "Nippon"?

A. It was alright. The "Borongo" lay alongside us.

Q. Came alongside?

A. Yes sir. We had steam from the "Borongo" to the "Nippon". I fixed up the steam hose myself by taking a common hose—you knew you take a common hose to make a steam hose it is no good. I went and got some canvas, lay it around three layers, then got some new line, four (4) inch line and lay it in strands and served it around the hose.

Q. When did the "Borongo" begin to lay alongside the "Nippon" so near that you could take steam from her?

A. I told you the time I could not tell exactly the day, but you know we had one small donkey boiler—but of course that was not sufficient steam for cargo and pumps—if you worked the pumps you cannot work cargo.

Q. Was it a week before you used the steam from the "Borongo"?

A. I told you—the Captain of the "Borongo" he will tell you all about it, from the hour and the day she went along side to give the steam. We had trouble and other things, you understand, he got it in the log book.

Q. How many white men were working on the wrecking crew or the salving crew?

A. There was me—of course Johnson he came out later; there was me, Anderson, Taylor—of course the time I got out there

292 Taylor came in. he didn't come back for a week afterwards; me Anderson, Flor, Rutledge and Handysides.

Q. Did the laborers work while they were there continuously during the day time?

A. Sometimes, yes.

Q. But not all the time?

A. No sir.

Q. When you say sometimes, do you mean that they frequently did not work?

A. Well, you see, the only hatch that was alright to work was No.

1 hatch. Of course the crew could go down there and work the whole day without any trouble, but in No. 3 and 4 hatch you couldn't because the smell was too much and the water. Of course if the pump pumped the water out and get fresh water in it would be different, but we didn't do it.

No further questions.

Cross-examination by Chas. C. Cohn:

Q. Have you been in the Philippine Islands continuously since Dewey came?
A. Yes sir.
Q. For whom have you worked during that time?
A. I worked for the Quartermaster Department for seven years.
Q. In what capacity?
A. Master of the launch.
Q. Of what launch?
A. On the "Memphis", the "Rochester", the "Cartright" and the "Peterson".
293 Q. When did you stop working for the Quartermaster Department?
A. I do not know exactly what year. I stopped work and went to work for Macondrey stevedoring and Van Buskirk.
Q. How long did you work for them?
A. About two years.
Q. When did you quit working for them?
A. Why, I think the day Mr. Macondrey got buried.
Q. Where did you work after that?
A. Bureau of Navigation.
Q. How long did you work for them?
A. Five or six years I guess.
Q. Continuously?
A. No, come and go.
Q. How much of the time during this five or six years were you working for the Bureau of Navigation?
A. You can find that out at the Bureau of Navigation.
Q. During this five or six years when you were not working for the Bureau of Navigation, what was your occupation?
A. Sailor.
Q. Sailor on what?
A. I was mate on the San Pedro twice.
Q. What is the San Pedro?
A. Tug boat of the Engineer's Department.
Q. How long were you mate on the San Pedro during this five or six years?
A. I do not know, I cannot tell you. You might find out at the Engineer's Office.
Q. You say, Mr. Brown, that Captain Anderson said he would give you Two Thousand (P2,000.00) Pesos if the "Nippon" reached Olongapo. Did the "Nippon" reach Olongapo?

294 A. Yes sir.

Q. Did he give you Two Thousand (P2,000.00) Pesos?

A. He did not.

Q. Is that the only arrangement you had for your compensation?

A. Mr. Helms seems to have had all to do about that business. I did not know about the rest of it, and Mr. Reese can tell you. He sent me back to Mr. Helms to get a paper.

Q. What arrangements did Mr. Helms make with you?

A. None.

Q. Were you paid for your services on the "Nippon".

A. I got paid for thirty-eight (38) days, but not paid for fifty-eight (58) days.

Q. Did you sign a receipt for the pay you received?

A. I signed some kind of a receipt. I asked Mr. Reese what it says and he says "for services on the 'Nippon' " and he read it out —I cannot read myself—and he says "services on the 'Nippon' ".

Q. At what rate were you paid?

A. Twenty pesos (P20.00) a day.

Q. Did you accept that payment that was offered to you or did you claim for more?

A. I claimed for what my paper called for from Captain Anderson. It calls for fifty-eight (58) days' pay, I only got thirty-eight (38).

Q. Did you claim for fifty-eight (58) days' pay or did you claim for pay at the rate of Thirty (P30.00) Pesos per day?

A. For Twenty (P20.00) Pesos per day.

Q. When did you make this claim, before or after you were
295 paid off?

A. I do not understand the question.

Q. Did you make this claim before you were paid off, or at the time you were paid off or after you were paid off?

A. I got a paper from Captain Anderson, and I have got it still, saying that I am entitled to fifty-eight (58) days' pay, and I only got thirty-eight (38) — pay. That is what Mr. Helms says. Mr. Reese sent me back to Mr. Helms and I only got thirty-eight (38) days' pay.

Q. You went to Mr. Reese claiming more pay and Mr. Reese sent you back to Mr. Helms, is that it?

A. Yes.

Q. That was after you had been paid off?

A. No.

Q. It was before you were paid off?

A. Yes.

Q. You are positive about that?

A. Yes.

Q. Did you go back to Mr. Helms?

A. I did.

Q. What happened there?

A. He gave me a paper, I don't know what it says, I can't read myself.

Q. What did you do with that paper?

A. I come back to Mr. Reese.

Q. Is that the time Mr. Reese paid you off?
A. Yes sir.
Q. Did you sign a receipt there?
A. Yes. I got Five Hundred Ten (P510.00) Pesos.
Q. What did you then do about your pay?
296 A. What?
Q. Was that the end of your negotiations or transactions?
A. I never *seen* Mr. Reese or Erlanger and Galinger. I never went near them, I know I have got twenty (20) days' pay—
Q. You never went near Mr. Reese or Erlanger & Gal-nger?
A. No sir.
Q. Did you ever make any demand?
A. No sir, I never went near them.
Q. Did you have anyone else make a demand for you?
A. Yes sir, I know a couple of fellows went to Erlanger and Galinger.
Q. Did they go for you?
A. Not for me; I transacted my own business.
Q. Did you have anybody go to Erlanger and Galinger to demand more pay for you?
A. No sir. I gave Mr. Rohde that paper I got from Captain Anderson to show that I am entitled to fifty-eight (58) days' pay and I did not get it, I only got thirty-eight (38) days' pay.
Q. Did you go to Mr. O'Brien, of the firm of O'Brien & DeWitt, concerning your pay?
A. No sir. Who is O'Brien?
Q. Did you authorize Mr. O'Brien to make a demand on Erlanger & Galinger—to make a demand for additional pay?
A. Not that I know.
Q. Did you go to any attorney for that purpose?
A. Yes I did.
Q. To what attorney did you go?
A. I forget his name. He is living down here on Plaza
297 Cervantes; it is Beck.
Q. Why did you go to Mr. Beck, for what purpose?
A. I went to Mr. Beck and said "here, I have got fifty-eight (58) days' pay coming and I only got thirty-eight (38) days."
Q. Why did you state in reply to a former question that you had made no formal demand on Erlanger and Galinger?
A. Mr. Reese said "You go to see Mr. Helms"—why should I go to Helms and kick? I got fired from the Bureau of Navigation. Why should I go to Mr. Reese? For what? He says "You see Mr. Helms, get a paper". What should I see him for? He had nothing to do with the ship "Nippon"! Anderson was my boss!
Q. Why did you state in reply to a former question that you had sent nobody to Erlanger and Galinger about your pay?
A. I never sent anybody there. Can you tell me anybody I sent there?
Q. What did Mr. Beck do for you?
A. Mr. Beck took a duplicate of the note that Mr. Helms gave me to give to Mr. Reese.

Q. Is that all he did? You never heard anything more about it?
A. No sir. I got the duplicate.
Q. In what year was the "Hooker" wrecked and salved?
A. I cannot tell you. I think it was 1900 or 1901.
Q. How long did it take you to get the "Hooker" off the strand?
A. She is lying there yet.
Q. In what year was the "Albatros" wrecked and salved?
298 A. In 1885.
Q. Where?
A. Cape of Good Hope.
Q. How long did it take you to get her off the strand?
A. About three weeks.
Q. With what was the "Albatros" loaded?
A. With sugar.
Q. In what form?
A. In sacks.
Q. In what year was the "Frederick Belling" wrecked?
A. I forget the year.
Q. About when?
A. In about 1887 I think.
Q. Where?
A. Cape Hatteras.
Q. With what was she loaded?
A. With general cargo from New York to San Francisco, case goods.
Q. How long did it take to salve the "Frederick Belling"?
A. She was dismasted.
Q. Did you remove her cargo?
A. Yes sir.
Q. How long a time did it take?
A. I cannot tell you. It was case goods there. General cargo.
Q. How long did it take?
A. I guess about three weeks.
Q. Where was she lying when you lightened her?
A. I said Hatteras, didn't I?
Q. Yes, but how near the mainland?
299 A. On the Cape itself.
Q. And the "Albatros" that you spoke of, was she on the mainland, too?
A. Yes sir.
Q. You served a long time in the United States Navy, didn't you?
A. Some time, yes.
Q. Do you remember what years you served in the Navy?
A. Yes I do very well, I know all about it.
Q. What years were they?
A. That is my own business.
Q. But you are telling your business now.
A. No, I just tell about this business, the rest is my own.
Q. Do you refuse to answer what years you served in the Navy?

A. No, I served twenty-two (22) years and six (6) months if you want to know.

Q. What years were they?

A. I don't know. If you want to go over and see Captain Hillgrove I guess he will tell you all about it.

Q. Why does he know about it?

A. Why does he know all about it? I don't know it is none of my business.

Q. Why do you say that Captain Hillgrove knows all about it?

A. I told you go to see Captain Hillgrove. That is all I can tell you. That is enough. What do you want me to do? Go down on my knees and answer?

Q. I want you to answer my question.

A. (Witness makes no answer.)

300 Q. Do you refuse to answer my question?

A. Certainly I do to you. Why should I answer questions to you? Are you my boss? Or what? I don't think you are. You come down and talk to me "Nippon" I will talk to you, but never mind about anything else. (To the stenographer). That is right, put it right down there.

Q. Why do you refuse to talk about anything else except the "Nippon"?

A. Why—I killed somebody, or stole some money and run away.

Q. And then you don't want to talk about it?

A. Well, Mister, you can go back into my pedigree and you will find that sometimes I am a little intoxicated, but in everything I am as square as a die.

Q. What is the last time you were intoxicated?

A. That is for you to find out.

Q. Were you intoxicated during the salvage of the "Nippon"?

A. I don't know.

Q. Can you read and write English?

A. Printed I can read, but script I cannot read.

No further questions.

(Sgd.) CHAS. BROWN.

301 Defendant then read in evidence without objection the deposition of the witness, J. P. BRECKWOLDT, taken under oath upon notice to plaintiff, which deposition is as follows:

(Title of Court and Cause.)

Be it remembered that on this 9th day of December, 1913, before the Notary Public, Mr. John W. Haussermann, in the City of Manila, P. I., the deposition of J. P. Breckwoldt was taken by agreement of the plaintiff and defendant and claimant, Oelwerke Teutonia, to be used as evidence in the above entitled cause, subject, nevertheless, to all objections as to irrelevancy, immateriality or incompetency.

J. P. BRECKWOLDT, being first duly sworn, on oath testified as follows:

Direct examination by Mr. J. H. Rohde:

Q. State your name, age, residence and occupation.
A. J. P. Breckwoldt, Marine Surveyor, Hamburg, 55 years of age.
Q. Do you know the Swedish steamer "Nippon"?
A. Yes, sir.
Q. Since when do you know the vessel?
A. Since the 26th of May.
Q. Was that the first time that you saw her?
A. Yes, sir.
Q. What was the occasion of your seeing or visiting the vessel, and where was the vessel at the time?
A. I was ordered by telegram to go to the wreck which was on Scarborough Reef. I was then in Singapore. It was the 20th of May.
302 Q. That is, you received the orders on the 20th of May?
A. Yes, sir.
Q. And how did you proceed to the wreck?
A. By the steamship "Cecilia", of the Hamburg American Line.
Q. And you reached the wreck at what hour and on what day?
A. On the 26th of May, on the morning, about 10 o'clock.
Q. Did you go aboard the "Nippon" at that time?
A. Yes, sir.
Q. What was the condition of the "Nippon"? How did she lie?
A. The ship was lying on the reef quietly.
Q. Was the ocean quiet?
A. Yes, sir.
Q. What was being done aboard the "Nippon"?
A. At the time I was there there was nothing done, but I will say it was the time of the meals, so that at that time they did not work at all.
Q. Were the other ships lying near the "Nippon"?
A. Yes, sir.
Q. Which ones were they?
A. I am not sure—it was one of the coast guards—I think it was the "Corregidor".
Q. Were there any scows or barges there?
A. Not then.
Q. Did you see the "Nippon" afterwards—after that day?
A. Yes, sir.
Q. How long afterwards?
A. The second visit was on the 6th of June.
Q. Did anybody go with you on that occasion?
A. Yes, sir.
Q. Who were they?
303 A. I can't remember. You see I made my report about it. I do not know all the names.
Q. Those that you remember?
A. Mr. Wegner. I have my report. I can't remember the names.

(Witness refreshes his memory from report). Captain Eggert, Mr. Wegner and myself.

Q. Who is Captain Eggert?

A. He is captain of the then stranded ship.

Q. Did Captain Eggert make any demands on the person in charge of the "Nippon" at that time?

A. Yes, sir.

Q. What was that demand, Captain?

A. He wanted to take charge of the ship.

Q. And was it refused?

A. Yes, sir.

Q. What was being done on the "Nippon" at the time of the second visit of yours to the ship?

A. They were discharging out of the Number 1 hold.

Q. What were they discharging?

A. Copra.

Q. How were they discharging the copra?

A. By baskets hoisted by hands.

Q. And rope?

A. And rope, yes.

Q. And was it put into barges? upon being taken off the ship?

A. It was put into a scow and filled in bags there.

Q. It was filled in the bags after being landed on the scow?

A. Yes, sir, on the scow, and brought over to the steamer which was lying there.

Q. Was there a steamer lying there?

A. Yes, sir.

304 Q. Do you know which one?

A. No, sir.

Q. About what distance from the "Nippon" was that steamer lying?

A. I will say about 500 feet.

Q. What was the condition of the weather on the second visit to the "Nippon"?

A. It was good. The weather was very good and no movement of the ship.

Q. Did you make another visit to the ship?

A. Yes, sir.

Q. When was that?

A. It was on the 15th of June.

Q. Did you go alone that time?

A. No, sir. I took some other people with me. I took with me (consulting report) Mr. Lebreton, Captain Eggert, Peters, and Lombeck.

Q. Did Captain Eggert make any demand at that time of any person in charge of the vessel?

A. Yes, sir.

Q. What was the demand, Captain?

A. He wanted to get the ship back.

Q. Wanted to take charge of the ship?

A. Yes, sir.

Q. What was the condition of the weather at this third visit to the "Nippon"?

A. It was also good weather.

Q. What was being done aboard the vessel?

A. There was no discharging done. I see one pump going and later on another pump was started.

Q. How long have you gone to sea?

305 A. Since '73.

Q. Have you had any experience in salving or wrecking of vessels?

A. Yes sir.

Q. Do you know how much copra there was aboard the "Nippon" —about?

A. Yes sir. It was about 1,800 tons. I am not quite sure.

Q. Within what time could the copra cargo have been taken out of the "Nippon" by a crew of competent salvors, or wreckers?

A. Regarding there could have been two lighters on each hatch they could have taken the cargo out within eight days.

Q. And how long would it have required to get the lighters and other appliances from Manila to the "Nippon"?

A. Well, I suppose two days each trip to take a lighter away from her—about two days one lighter at a time.

Q. What would have been a proper method of taking the copra out of the hold?

A. As the condition was it would have been the best to take those grabs which they discharge coals with—these big heavy things they throw down the hold of a ship to take out coals.

Q. How could the grabs have been worked in the holds of the "Nippon" for the purpose of discharging the copra cargo—by steam?

A. Yes sir.

Q. Were the engines or boilers of the "Nippon" in condition to furnish the steam?

A. No sir.

Q. How could the steam have been obtained?

306 A. The steam could have been obtained by a boat lying alongside—from another boat—from a wrecking boat—from the coastguard boat.

Cross-examination by Mr. Cohn:

Q. Captain Breckwoldt, you say you were ordered to go to the wreck in May, of this year. By whom were you ordered?

A. By the Humburg underwriters.

Q. And what interest, if any, did they have in the vessel or her cargo?

A. They had the cargo interest.

Q. What do you mean by saying "They had the cargo interest"?

A. They had insured the copra cargo of the "Nippon".

Q. And were you representing those underwriters during your entire stay in Manila and your visits to the "Nippon"?

A. Yes sir.

Q. Did you, on behalf of the Hamburg underwriters, make any attempt to secure charge or have charge of the salving of the "Nippon" or her cargo?

A. Yes sir, but I must add that I done this through the owners, because the insurers cannot interfere themselves. The owner has to do the salving.

Q. Did you attend a conference at this office in the month of June, 1913, in the company of Mr. Stroebel, of Struckmann & Co., of Mr. S. Erlanger, of Erlanger & Galinger?

A. Yes sir, but I am not sure of the date.

Q. Did you on that occasion make overtures for taking over the salvage of the vessel?

A. Yes sir.

Q. On what terms?

A. Well, you were asking 60 per cent., I remember, if
307 you would let the ship go over to our salvors.

Q. By whom were the overtures for taking over the salvage made?

A. It was made by me. I was the only one who made the proposition, but I consulted the captain and representatives of owners before.

Q. What other terms and conditions were imposed beside the payment of 60 per cent. to Erlanger & Galinger?

A. As much as I understand, you wanted to leave off the salvage and hand it over to us if we would pay 60 per cent. on ship and cargo to you.

Q. Do you mean to say that any such offer as that was made to you, Captain Breckwoldt?

A. I understood that.

Q. What was said by you at that conference concerning the persons by whom the salvage operations were being conducted?

A. Please put that a little differently, for I do not understand the question.

Q. Is it not a fact, Captain Breckwoldt, that you stated that you desired to take over the salvage operations, but that in order to do so you required the services of the same persons who were on board conducting the salvage operations by Erlanger & Galinger?

A. No sir.

Q. What was said?

A. I tried if we could not come to an agreement to keep the gear there not to lose any time. That is what I meant.

Q. But not the persons?

A. No sir, because we had our people.

Q. Is it not a fact, Captain Breckwoldt, that the persons who were on leave from the Bureau of Navigation and employed by Messrs. Erlanger & Galinger in that salving work on board the "Nip-
308 pon" were discussed at that conference?

A. I can't understand.

Q. Is it not so that there was a discussion about the persons who were at work on board the "Nippon" from the Bureau of Navigation?

A. Yes sir.

Q. What was the discussion concerning those persons?

A. I don't know those particulars. I think I know the run of the business—What we wanted to decide, but these particulars I do not remember.

Q. Is it not a fact that you stated that you must have those persons if you took over the salvage operations, and that we stated that those men were employees of the Bureau of Navigation on leave of absence and that they were not in our employ and we had no control over them?

A. Yes sir.

Q. What, then, was the occasion of my making that statement to you?

A. I do not remember that I said that I must have those men.

Q. Do you remember on that occasion, Captain Breckwoldt, that you were asked by what means you proposed to improve the salvage operations, or by what different methods you proposed to unlade the ship?

A. Yes. I could do it better.

Q. Do you remember that you were asked how you could do it better?

A. Yes sir.

Q. What was your reply?

A. I said, well—I wouldn't state.

Q. Was not your reply "That's my secret"?

309 A. Yes. I said so.

Q. Sometime after that conference, Captain Breckwoldt, did you attend a conference at the offices of Messrs. Bruce, Lawrence, Ross & Block?

A. No sir, I was not there.

Q. Sometime prior to the conference at this office, concerning which you have just testified, did you attend a conference at the residence of the Vice-Governor?

A. Yes sir.

Q. Who was present at that conference?

A. I know Mr. McCoy came last. I have seen Mr. Gilbert; I have seen Captain Eggert; Mr. Stroebel. I think that is all. No, there was one more, the Swedish Consul was there I think.

Q. Was Mr. Erlanger there?

A. Yes sir; and you were there too.

Q. Judge Rohde?

A. Yes sir.

Q. What was the occasion of that conference?

A. I could not tell you.

Q. At whose request was that conference called?

A. I don't know. Mr. Gilbert called it.

Q. At whose request?

A. I don't know.

Q. Did you have anything to do with the calling of that conference?

A. I went there, but it was on my own accord.

Q. Besides making a demand through the Owners upon Messrs.

Erlanger & Galinger for the possession of the steamer "Nippon", what other steps did you take upon your arrival at Manila to secure the possession of the vessel?

310 A. I went to Messrs. Struckmann & Co. because he was the representative on the spot here for the Hamburg underwriters and I was sent here to see the position of the wreck and to assist them—Struckmann & Co.

Q. What did you do?

A. I don't understand.

Q. The question is, Captain, what did you do toward getting possession of the vessel and of the salvage work?

A. I first went out there, and then I induced upon you to push the work along because it was going very slow. I did this together with Captain Eggert.

Q. The question is what steps did you take? What did you do towards getting the possession of the vessel and its cargo and taking charge for the Hamburg underwriters?

A. I can't take any steps—only the Captain of the ship.

Q. Was anything done toward interfering with the work of Erlanger & Galinger in their salving operations?

A. We protested against it.

Q. To whom did you protest?

A. To the man in charge of the work.

Q. Is that all that you did?

A. We also wrote letters and protested against Erlanger and Galinger.

Q. Is that all you did?

A. Yes sir. We couldn't do any more. We can't get possession of the ship if they don't want us to have it.

Q. Did you make any effort to take away the charters of the coastguard vessels chartered by Erlanger & Galinger?

A. Well, we tried to do it but we couldn't get them.

311 Q. Did you take any steps toward interesting the State Department of the United States Government at Washington?

A. Yes sir.

Q. Did you take any steps toward interesting the government of Sweden?

A. Yes sir.

Q. Did you take any steps toward interesting the government of Germany?

A. Yes, I wired right home.

Q. The purpose of all those steps was what?

A. These steps were for the reason that we were the owners of the cargo and I was representing the cargo and we wanted to do the work ourselves.

Q. You were not the owners of the cargo, you were the insurers?

A. Yes sir, in this way it is the same, as I can't take the steps myself, I can make those steps through the owners.

Q. How long did your dissatisfaction with the salvage work of Erlanger & Galinger continue?

A. Right from the beginning.
Q. How long did it continue—up to when?
A. Right to the end.
Q. Right until the vessel was actually salved?
A. Well, yes.
Q. On the occasion of your visit to the vessel on the 15th of June you went as a member of a committee appointed by the Governor-general did you not?
A. Yes sir.
Q. And you made a report of that visit to the Governor-General?
A. Yes sir.
Q. Was that your last visit to the vessel?
312 A. (Consults report.) Yes sir.
Q. After that visit, and up to the time that the vessel was salved, you remained of the opinion that she would not be salved, did you not?
A. I didn's say that—that was not my opinion. I would say the cargo would not be salved before the boat was gone, in case a typhoon would happen.
Q. This was 48 hours before the vessel was actually floated and taken to Olongapo, and you published an interview in the Manila newspapers expressing your views about the vessel and her cargo, did you not?
A. I did not. I never published anything.
Q. Was there anything published?
A. If they asked me anything and they made such a long tale of it, I did not publish it.
Q. How many interviews by you concerning the salvage of the cargo were published in the Manila papers during your stay in Manila?
A. I don't know.
Q. An average of one a day, wasn't it?
A. I wouldn't say as many as that.
Q. Your statements were to the effect that the vessel was not being properly salved?
A. Yes sir.
Q. And your opinion at the time that these interviews were being published was also to the effect that the vessel would not be successfully floated?
A. No.
Q. Do you remember the interview published in the daily papers of the City of Manila 48 hours before the salving of the vessel, in which it was sarcastically stated that the property owners of
313 the Escolta had better get out of the way because the vessel was coming up the Escolta?
A. I didn't have that published.
Q. Did you correct it after it was published?
A. No, I did not correct it, but I told that man I didn't like to see him any more.
Q. Captain, you say that the vessel could have been discharged of

her cargo of copra in 8 days by means of two lighters at each hatch: by that you mean two lighters at each of the five hatches.

A. Yes. At four to make sure, because one hatch is very close to the other.

Q. How many grabs would you have employed on each lighter?

A. Eight: two in each hatch.

Q. And how much steam would each grab consume?

A. It would consume the whole boiler capacity of a good sized steamer.

Q. Each grab?

A. No, all together.

Q. You would have steam for all 8 grabs from one coastguard vessel?

A. Say, take two steamers.

Q. You don't know whether it would take one or two, or maybe three?

A. Two in any case would be sufficient.

Q. And how long would two coastguard vessels supply steam to those grabs?

A. 8 days.

Q. Entire 8 days?

A. Yes, you had so many steamers there. They were.
314 They were going off and on. Sometimes you had two and sometimes three.

Q. How many coastguard vessels would you have employed?

A. That is a question I can't answer.

Q. Where would you have obtained your supplies for the work?

A. What supplies?

Q. Would the work require any supplies?

A. Yes, I think so.

Q. What supplies would the work require?

A. These grabs and lighters.

Q. It would not require any other supplies?

A. Some men.

Q. Would it require any water?

A. Yes sir.

Q. Where would you get your water?

A. If you had boilers on deck then you use water for them.

Q. Please answer the question. Where would you get your water for steam purposes?

A. Take it along in tanks.

Q. How much water would you have taken?

A. I couldn't tell.

Q. How long would that water have lasted?

A. That is a question I couldn't answer.

Q. What lighters would you have used?

A. Open lighters, if I could get them, with big hatches.

Q. Where would you have obtained those lighters?

A. Some in Manila.

Q. From whom?

A. From any stevedore.

Q. Do you know of any stevedore in Manila who has those lighters such as you require?

A. Yes sir.

315 Q. You mean to say that you would use the ordinary lighters in use by the stevedores of the City of Manila?

A. Well, I know lighters could have been obtained.

Q. Please answer the question. Would you have used the lighters that are used by stevedores in their work in Manila harbor?

A. I did not inspect those lighters, but I know they have lighters.

Q. You do not know whether you would have used the lighters that they use or not?

A. In other words, you want to know whether there were such lighters to be obtained here?

Q. The question is: In your work of unloading the steamer "Nippon" would you or would you not have used the lighters that are now being used by stevedores in Manila in Manila harbor?

A. I don't know that.

Q. You don't know whether the lighters used in Manila are suitable or not?

A. I don't know. I am not sure.

Q. Where would you have procured your steam grabs?

A. There were some in Manila.

Q. Please answer the question.

A. Here in Manila.

Q. From whom?

A. I don't know, but I have seen some.

Q. How many?

A. Two.

Q. Where have you seen them?

A. Well, have seen—I don't know where, but I have seen them.

Q. Didn't you see them on board the steamer "Nippon"?

316 A. No, sir.

Q. They never had any on board the S. S. "Nippon"?

A. Well, I don't know. While I was there they did not have any.

Q. Do you know if those you saw elsewhere were the same as those that were used on board the "Nippon"?

A. I have seen two somewhere on the Pasig, but I am not quite sure where.

Mr. Cohn: That is all.

Mr. Rohde: Re-direct examination.

Q. During the three visits that you paid to the ship "Nippon" on Scarborough Reef was the weather such there on the reef that lighters might have lain alongside the "Nippon" at all times that you were there?

A. Yes, sir.

317 Defendant then read in evidence without objection the deposition of the witness, L. LEBRETON, taken under oath upon notice to plaintiff, which deposition is as follows:

(Title of Court and Cause.)

Be it remembered that pursuant to the stipulation hereunto annexed, and on the 9th day of February, 1914, at Manila, in the Philippine Islands, before me, Jose M. McMicking, Clerk of the Court of First Instance of the City of Manila, personally appeared L. Lebreton, a witness produced on behalf of defendants in the above entitled action, now pending in said court, who being by me first duly sworn, was then and there examined and interrogated by William J. Rohde, Esq., of counsel for defendants, and by F. C. Fisher, of counsel for plaintiffs; that A. W. Beam, a competent stenographer, took down the questions and cross-questions propounded to the witness and his answers to them, and transcribed them faithfully and correctly, into longhand; that the testimony of the said witness so taken and recorded is as follows:

Direct examination by Mr. Rohde:

Q. Please state your name, age, residence and occupation.
A. L. Lebreton; 68; Manila; stevedore.
Q. How long have you been in the Orient?
A. Since 1863.

Q. What has been your occupation during the time that
318 you have been in the Orient, Mr. Lebreton?

A. I have been for a number of years in the Customs Service of China—35 years—Since then marine surveyor and stevedore, and now stevedore with C. S. Robinson Co.
Q. Do you know the steamship "Nippon"?
A. Yes sir.
Q. Did you see her during last year?
A. I did.
Q. Where was she at the time that you saw her?
A. The first time on Scarborough Reef.
Q. Did you see her there more than once?
A. Only once.
Q. On what date—about?
A. Sometime about the middle of the month of May.
Q. Who were with you there at that time?
A. Captain Eggert, Captain Beckjord and Captain Hessell.
Q. Was Mr. Wegener there?
A. No. Mr. Peterson was there, and a man from Behn, Meyers.
Q. How long did you remain there?
A. We were there three days.
Q. What time of day did you arrive?
A. Early in the morning after daylight.
Q. And left there at what hour in the evening?
A. In the afternoon about 4 o'clock on the third day.
Q. What was being done on the "Nippon" at that time?
A. When we arrived there there was one pump at work. Shortly afterward another started. The second pump stopped working in two or three hours, and the pump which was working when we ar-

rived stopped at five o'clock. At five o'clock a whistle was blown and all the work stopped.

319 Q. The entire work stopped at five o'clock?

A. Yes, sir; as far as we could see from the steamer.

Q. At what time did the work begin in the morning?

A. The whistle blew at 7 o'clock and then there was moving around the decks.

Q. Was any copra being taken off?

A. No, sir.

Q. Nothing at all?

A. No, sir, nothing.

Q. Have you any knowledge of salvage operations or the wrecking of vessels?

A. No, I have never had anything to do with the wrecking.

Q. And with stevedoring?

A. Since I have been in Manila—4 or 5 years—and more or less during the time that I was in the customs service in China.

Q. Are there people in Manila, Captain, who as a part of their business salve ships and their cargoes?

A. Certainly there are, right here.

Q. Who are they?

A. Captain Hessell, for example, and Captain Robinson for many years has been in the salvage business.

Q. Did you examine all the holds of the vessel—of the "Nippon"?

A. Yes, as far as we could.

Q. From your examination of the "Nippon" and the cargo thereof can you form an opinion and state how long it should have required to take that cargo off, Captain?

A. I should say, under conditions of fine weather, it ought to be done in less than a fortnight. It might be done in 10 days working night and day.

320 Q. Do you know what implements Captain Robinson has that would have been suitable for the purpose of taking that cargo out of the "Nippon"?

A. We had several pumps and grabs and everything ready to take out—and scows. We have our own scows.

Q. How many?

A. Sixteen.

Q. And you have pumps and grabs?

A. When I say "our own scows" I mean they belonged to the Company. Grabs, they were to be had. We had them prepared and all the gear ready.

Q. Had you been making preparations for taking off of the cargo?

A. We were prepared to go out at a moment's notice.

Q. What would have been the proper method of taking the copra off the steamer "Nippon" on Scarborough Reef?

A. That is a matter that would depend on conditions. I should say the only and best way would be grabs.

Q. Do you know anything about the means and kind of labor to be obtained in Hongkong, China, for the purpose of salving vessels?

A. Ordinary labor.

Q. Everything necessary to take off cargo from vessels?
A. Yes sir, plenty of it.
Q. Plenty of it in Hongkong?
A. Yes sir.
Q. And how does the labor obtainable in Hongkong for such purposes compare with the labor to be obtained here in the Philippine Islands?
A. You mean whether the men are a better class of labor?
Q. Yes.
A. Certainly.
Q. Much better?
A. I should say that one Chinaman was worth three Filipinos.
Q. Laborers for that purpose?
A. Yes, for that purpose.
321 Q. Is it not a fact that a Chinaman is very hardy, daring and enduring in that kind of labor?
A. I have never had that kind of labor to do, but from my knowledge of Chinamen I should say they are.

Cor Cross-examination by Mr. Cohn and Mr. Fisher:

Mr. Cohn:

Q. Mr. Lebreton, at the time of the visit that you made to the "Nippon" that you refer to in your direct examination, was that the time the official committee went out?
A. Yes sir.
Q. Did you go aboard the "Nippon" on that occasion?
A. Three or four times.
Q. During that visit?
A. Yes sir.
Q. There was no obstacle put in the way of your visiting the vessel, was there?
A. I was the last to go on board the first morning, and I was told by Captain Breckwold that we would not be allowed to go in the launch.
Q. Were any protests made against your visiting the "Nippon"?
A. Personally, no; the objection was put in before I got on board. I was the last to go on board.
Q. All you know about the objections are what Mr. Breckwold told you?
A. Yes sir.
Q. Mr. Breckwold was a member of your party?
A. Yes sir.
Q. You have stated, Mr. Lebreton, that Captain Hessell, of this city, has a complete wrecking outfit, do you know that of your own personal knowledge?
A. No, I don't say that.
Q. Do you know how much of an outfit Captain Hessell has?
A. No.
Q. Where was the Captain Robinson that you have referred to in May and June of last year?

A. He was here in Manila.

Q. Captain Robinson?

322 A. Yes sir.

Q. You are positive, are you?

A. Oh no! What am I thinking about? He was at home. I was thinkinf of the "Melbourne".

Q. Then he was not in Manila, but was in Europe, in London, England, during the entire months of May, June and July of last year?

A. Yes. He arrived here in July.

Q. You have stated that Captain Robinson, or Captain Robinson's company, has a full wrecking outfit ready to go out to the "Nippon" at a moment's notice?

A. I said they had gear ready to take off at a moment's notice.

Q. Do you know that of your own knowledge?

A. No, but I was told by Captain Bailey.

Q. You have stated that Captain Robinson, or his company, has several pumps and grabs, is that correct?

A. I said they had them prepared ready to use at a moment's notice.

Q. What became of those pumps? Where are they now?

A. I could not say.

Q. Where were they in May and June, of last year?

A. In Manila.

Q. Are you positive they were here in Manila?

A. I couldn't say because I was not mixed up in that.

Q. You have stated that the C. S. Robinson Tug & Lighter Co. have 16 scows that were available for use in the salvage, is that correct?

A. I believe so, yes.

Q. Do you know if those scows have seagoing licenses?

A. No, but they could get them at a moment's notice by application at the Custom House.

Q. You know that positively?

A. Yes, one of them went down to the "Melbourne".

Q. What are those scows that you refer to?

A. Ordinary square built scows built for transferring cargo.

323 Q. Ordinary scows for river and harbor lightering are they not?

A. Yes sir.

Q. Have they coastwise licenses?

A. No.

Q. Are they the kind of scows that would be available for taking out into the open sea?

A. They have been used for that purpose. One went down to the "Melbourne".

Q. What do you mean by that?

A. She went down to the wrecked steamer "Melbourne" which Captain Robinson was salving. Captain Bailey took her down and she came back safe.

Q. Was that a salvage operation by the C. S. Robinson Co.

A. No.

Q. Did the C. S. Robinson Co. have anything to do with it?

A. I don't know. Not to my knowledge.

Q. You have stated Captain Lebreton that there were suitable salvage appliances and labor to be had in the port of Hongkong. Is it not a fact that it takes considerable time to engage such service and get it under way?

A. I do not think so. I have never tried it, but arrangements could be made with the docks to get the outfit in a very short time.

Q. What do you mean by "a very short time"?

A. A couple of days. It is hard to say. In Hongkong they have gear and are always prepared to do that sort of work.

Q. You are satisfied from your own knowledge and observation that such a salvage operation from Hongkong could be gotten under way in a couple of days?

A. Yes sir.

Q. Do you consider it feasible, Mr. Lebreton, to conduct a salvage operation on Scarborough Reef with Hongkong as a base of supplies?

A. If you take the time, yes, certainly.

Q. How many hours sailing is Scarborough Reef from the Port of Hongkong?

A. About 40 hours. I don't know exactly.

324 Q. And you think that 40 hours of sailing from Scarborough Reef to the port of Hongkong would be a fairly safe and sane journey for scows loaded with copra?

A. No, I don't say that.

Q. What do you say?

A. The men could be brought from Hongkong, and the pumps and gear, and landed on the Nippon. You could very easily get a boat from Hongkong to bring the men. There are many boats sailing from Hongkong to Manila and it would be easy to bring the men over. And lighters, or even coastguard steamers could be chartered to take delivery of the cargo.

Q. Then you would not have gotten your steamers and lighters from Hongkong?

A. No it would not be necessary.

Q. Have you had any experience in unloading copra in bulk?

A. No.

Q. Have you had any experience handling copra that is partially damaged and partially undamaged in the hold of a ship?

A. No.

Q. When was this salvage operation of the steamer "Melbourne" that you refer to? When did that occur?

A. I don't remember.

Q. Before or after the "Nippon?"

A. After.

Q. What was the outcome of that salvage operation?

A. As far as I heard she was broken to pieces.

Q. The vessel was not salved?

A. No sir.

Q. Was her cargo salved?

A. No sir.
Q. Any part of it?
A. No.
Mr. Fisher: Mr. Lebreton, you stated, I believe, that in your judgment the proper way to have taken the copra cargo out of the Nippon would have been by the use of clamshell buckets, is that correct?
325 A. Yes sir.
Q. Just state in a general way what process you would have adopted to remove that cargo from the holds of the "Nippon"?
A. How do you mean?
Q. State in a general way what method would have been employed in removing the cargo from the "Nippon" by the use of clamshell buckets.
A. Steamers, and by dropping the grabs down the hatches and swinging the copra aboard steamers lying alongside.
Q. The cargo of copra in the holds of the Nippon was not all below the opening of the hatches, was it?
A. I didn't see all. What was above is just what I saw.
Q. But you know as a stevedore, do you not, that when copra is stowed in the hold of a vessel that only a comparatively small portion of it is below the opening of the hatches?
A. Yes sir.
Q. How would you proceed by means of clamshell buckets to remove that part of the copra which is not in the wake of the hatches?
A. The water in the hold would have done that. As you removed the copra from the square of the hatch the rest of the copra would have floated down to the hatch.
Q. Would you have deemed it advisable to have endeavored to remove the dry copra without mixing it with the wet copra?
A. Yes sir. I am talking now of what I saw the state the vessel was in when I saw her. If it was bags you would not start to use the grabs. If it was dry you could shovel it into baskets. I was referring to the state of the vessel when I saw it.
Q. Then I understand you to say that you would only use grabs after you had removed that portion of the cargo which could be taken out by means of baskets and shovels, is that so?
A. Yes sir.

326 Defendant then read in evidence without objection the deposition of the witness, PATRICK MILLER, taken under oath upon notice to plaintiff, which deposition is as follows:

(Title of Court and Cause.)

Be it remembered that pursuant to the stipulation hereunto annexed, and on the 9th day of February, 1914, at Manila, Philippine Islands, before me, Jose M. McMicking, Clerk of the Court of First Instance of the City of Manila, personally appeared Patrick Miller, a witness produced on behalf of the defendants in the above entitled action, now pending in said court, who being by me first duly sworn,

was then and there examined and interrogated by William J. Rohde, Esq., of counsel for defendants, and by F. C. Fisher, of counsel for plaintiffs; that the testimony of said witness was taken down by A. W. Beam, a competent stenographer and afterwards transcribed into longhand, as follows:

Direct examination by Mr. Rohde:

Q. State your name, age, residence and occupation?
A. Patrick Miller; 57, marine surveyor; 129 Calle Dasmarinas.
Q. How long have you been in the East, Mr. Miller?
A. Since 1889.
Q. What has been your occupation during that time?
A. I have been manager of engineering works, sailing, chief engineer of steamers, and marine surveyor this last 10 years.
Q. Did you at any time make any examination of the Swedish steamer "Nippon"?
327 A. Yes, sir.
Q. When and where was the ship at that time?
A. On the 18th of May and the 26th of May; on Scarborough Reef. Later in Olongapo.
Q. What was being done on the steamer "Nippon" on the 18th of May last?
A. A few men were discharging copra from No. 3 hatchway. Many more were on board not particularly engaged at any particular work as far as I could see.
Q. Were things being conducted in a businesslike manner, as far as stevedoring goes, Mr. Miller?
A. That depends entirely on how long they had been on the ship before I saw them. Had they just arrived it would have been all right. Had they been there a few days, certainly not.
Q. And on the 26th what was being done?
A. Very much the same.
Q. Was copra of any kind being taken off?
A. No. In fact, to the best of my recollection, the workmen were busy taking bundles of sacks from the steamer "Vizcaya" and putting them on a scow. I don't remember of any copra being taken out.
Q. How long did you remain on the 26th?
A. From about 9 in the morning until half past one, I think.
Q. From your examination of the cargo and the steamship "Nippon", and taking into consideration the weather that prevailed during May last, can you state, Mr. Miller, how long it should have taken to take that cargo off?
A. I am not a stevedore by profession, but I think two weeks night and day work was ample.
Q. Is it customary in any salvage operations to work only from 7 in the morning till 5 o'clock, with an interval for lunch?
A. On salvage operations I say every person ought to work night and day, especially a vessel in imminent danger from any bad weather that occurred work should have been carried on night and day.

Q. With various shifts of men?

A. Yes, of course.

Q. How should that copra cargo have been taken off, in
328 your opinion?

A. Considering that approximately 60% of the copra was get-at-able with spades and shovels, I certainly would have dug out what was accessible with shovels and baskets and used grabs on the remaining portion that was under water.

Cross-examination by Mr. Fisher:

Q. Your statement, Mr. Miller, that two weeks would have been sufficient time to remove the copra from the "Nippon" is based upon the assumption that you would get all the labor needed to keep the shifts going all hours of day and night, is it not?

A. Yes, sir. In Manila they work night and day cargo and presumably there would have been no difficulty to get men to go to Scarborough Reef.

Q. Your opinion as to the length of time necessary is wholly based upon the assumption that you had plenty of labor available and willing to work night and day, in shifts?

A. Certainly.

Q. How long were you on board of the 26th, Mr. Miller?

A. From about 9 A. M. till 1:30 P. M., as far as I recollect.

Q. Then so far as you know personally they may have been working men in shifts?

A. Yes, so far as I know personally.

Q. While you were on the "Nippon" did you observe whether shifts were changed in the process of the work being done by the men you observed working?

A. On the second occasion they were principally engaged in getting empty bags from the "Vizcaya", but the first occasion, no; I didn't see any change of shift.

Q. The first occasion was shortly after the work had commenced, was it not?

A. I can't say. I don't know exactly when the work did begin, but presumably not long after they started work.

Q. At whose instance did you make that trip to Scarborough Reef?

A. The first trip at the request of Struckmann & Co., agents for the Hamburg underwriters.

Q. And the second?

A. Captain Eggert and the owners.

Q. Did you have any conversation on the 12th or 13th of May, last, with Mr. Deefer, the representative of the firm of Ynchausti & Co., of this city, regarding the chartering of the S. S. "Viz-
329 caya" or the "Elcano", for the purpose of going out to Scarborough Reef?

A. Sometime about that date Mr. Deefer—I met him in the street accidentally. Mr. Deefer asked me if there was any chance of any vessels being engaged for wrecking purposes. I told him I could not

give him any information on the point. Mr. Deefer apparently wished to charter a vessel and wanted to know if anything was being done in that relation. I told him I had no information on the matter.

Q. That was before or after you had been approached by the agents of the underwriters?

A. Before.

Q. Did Mr. Deefer at that time mention the vessels of Ynchausti & Co.'s fleet available for charter?

A. Not to the best of my recollection. He may have, but I do not remember.

Q. Was this subject taken up again on the following day with Deefer?

A. I met Mr. Deefer on two occasions, presumably on two different days, that was all. I gave him no information and there was no more about it.

Q. Did you communicate at any time to Messrs. Struckmann & Co. the fact that these steamers had been offered by Ynchausti & Co.?

A. To the best of my recollection I never had any conversation with Struckmann & Co. on that point at all, with regard to chartering vessels.

Mr. Rohde: Mr. Miller, how could steam have been obtained for the operation of the winches to work the grabs to take off copra?

A. By pumping out the machinery department of the vessel the main and donkey boilers would have been accessible.

Q. Or could it also have been obtained from ships lying alongside the "Nippon"?

A. In calm weather, yes.

Q. And could the engineroom of the "Nippon" have been cleared of water?

A. Certainly. A good attack on the water would have cleared it out as there was no serious damage in that department.

Q. And by clearing the engineroom of water could the boilers of the "Nippon" have generated the steam?

A. Certainly.

330 Q. How long do you think, Mr. Miller, would it have taken to get the engineroom clear of water?

A. That is not easy to say, but a matter of three or four days should have done it.

Q. You examined the "Nippon" while she was in the drydock at Olongapo, did you not?

A. Yes, sir.

Q. You know just what leaks there were?

A. Yes, sir.

Mr. Cohn: Where did the water get into the engineroom of the Nippon, Mr. Miller?

A. The main bulk of it entered the engineroom of the "Nippon" by way of the floor underneath. The after bulkhead between the engineroom and No. 3 hold there were a number of little leaks from rivet holes, but there was no serious damage in that department to

admit water enough that the pumps could not have gotten the better of it.

Q. Do you mean to say the engineroom could have been pumped dry?

A. Yes, sir.

Q. Are you sure?

A. Yes, sir. By plugging up the rivet holes and using cement to fill the holes where the water was coming in.

Q. Do you know if the water in the engineroom was rising and falling with the tide?

A. Very little. I only know by what people told me. The water was black and inkish and it could not have remained that way if it went out with the tide.

Q. Do you know about the water that welled into the engineroom through the coal bunkers?

A. There were no holes in her aft of the coal bunkers except damaged rivets and seams.

Q. Do you know that the owners of the vessel were protesting because the coal in the coal bunkers of the vessel was not jettisoned in order to repair the holes that they claimed were underneath the holes in the coal bunkers?

A. It was reported by the men in the engineroom when the vessel took the ground that a stream of water burst in on the starboard side and flooded everything, but that hole is yet to be found. It never existed.

Q. You found that out after the vessel was floated and in the dock at Olongapo?

331 A. Yes, sir.

Q. Mr. Miller, you stated that after the engineroom had been successfully pumped out that the boilers on the "Nippon" would be available. Do you know if that was actually done?

A. I presume that after the water was put out the boilers were put under steam.

Q. How large are the boilers of the "Nippon"?

A. I should say probably 15 feet in diameter by 12 feet.

Q. About what quantity of water would those boilers consume under a working head of steam? How much fresh water?

A. That would entirely depend on what machinery was being used. These boilers were built to supply the main engine with steam. It could be worked out what horsepower would be required.

Q. Was the condensing apparatus on board the steamer in good condition?

A. You mean the engine's main condenser?

Q. Yes.

A. Presumably.

Q. You don't know?

A. Not of my own knowledge.

Q. Was any supply of fresh water on Scarborough Reef?

A. None.

Q. No supply within 200 miles?

A. Not absolutely necessary.

Q. What would you use?
A. Salt water.
Q. What is the effect of the use of salt water?
A. By judicious blowing down you can run for quite a long time, weeks, months.
Q. And with what effect on the boilers?
A. No particular effect if you cut the scale off before it gets too thick. I have navigated in the Red Sea and Persian Gulf before the days of condensers and we had nothing but salt water to use.
Q. And you recommend the use of salt water in salvage operations, notwithstanding the fact that it necessitates the shutting down of the engines to clean out the boilers?
332 A. Certainly. Right here in the river at Manila the launches run around for months without any trouble. And the river water is salt part of the time at least.
Q. Did you see the boiler that was in use on the "Nippon"?
A. To the best of my recollection that was a boiler of the locomotive type, a type that should not be used for salt water.
Q. Was that a new boiler?
A. I presume it was.
Q. Did you see the effect of the use of salt water on that boiler?
A. No. I heard that the boiler had been damaged, but whether it occurred after my second visit I could not say.
Q. Do you know what steam power was used in the wrecking operations prior to the pumping out of the engineroom?
A. There was a small vertical boiler.
Q. Do you know if they had any vessels alongside supplying steam from their boilers?
A. I believe the "Lalloc," or some such vessel, but not to my personal knowledge.

Mr. MILLER recalled.

Judge Rohde: Did you see any Filipino laborers asleep on the "Nippon" on Scarborough Reef on or about the 26th of May?
A. Yes, sir.
Q. Where were they sleeping?
A. They were in the No. 1 hatchway, aft of the hatchway on top of the copra. Captain Bailey shook one up and he made his way up on deck. I looked at the man to see if there was any effect of the copra but he seemed to be quite lively. I believe there were more but I didn't see any more.
Q. Is the Captain Bailey you mention the witness that just left the stand?
A. Yes. Mr. Yuill of Ker & Co. and I think this gentleman from Struckman's was there. Four of us went down to investigate that hold.

Mr. Fisher: How far below the level of the upper deck was this layer of copra?

A. It was the lower deck. We were down below the lower
333 deck, probably about four feet.

Q. And the hatches were all open at that time?

A. Yes, sir.

Q. And was this man lying in the wake of the hatch or on the outside?

A. He was inside about 5 meters from the hatchway. It struck me as rather peculiar that he should sleep there.

Q. You say it struck you as rather peculiar—why?

A. Because it was very hot and a nasty smell.

Q. It was a disagreeable smell, was it?

A. Yes, no one would think they wanted to sleep there.

334 Defendant then read in evidence without objection the deposition of the witness, A. C. BAILEY, taken under oath upon notice to plaintiff, which deposition is as follows:

(Title of Court and Cause.)

Be it remembered that pursuant to the stipulation hereunto annexed, and on the 9th day of February, 1914, at Manila, P. I., before me, Jose M. McMicking, Clerk of the Court of First Instance of the City of Manila, personally appeared A. C. Bailey, a witness produced on behalf of the defendants in the above-entitled action, now pending in said court, who being by me first duly sworn, was then and there examined and interrogated by William J. Rohde, Esq., of counsel for defendants, and by Mr. Charles C. Cohn, of counsel for plaintiffs; that the testimony of said witness was taken down by A. W. Beam, a competent stenographer, and afterward transcribed into longhand, as follows:

Direct examination by Mr. Rohde:

Q. State your name, age, residence and occupation.

A. A. C. Bailey; 38; Manila; master mariner and stevedore.

Q. How long have you been in the East?

A. I have been two years and eight months out here, but I was running out East for sixteen years.

Q. What was your occupation in the month of May last year?

A. I was stevedoring with C. S. Robinson Co.

Q. Were you managing his outside business at that time?
335 Q. Yes sir.

A. Did you ever see the Swedish steamer "Nippon"?

Q. I saw her several times.

A. Where?

A. In Manila Bay and on Scarborough Reef.

Q. How many times did you see her on Scarborough Reef?

A. Twice.

Q. What dates?

A. I think the 18th and 26th.

Q. What was being done on the "Nippon" during those days that you were there?

A. The first time I was there they were discharging cargo out of No. 1 hatch onto a scow.

Q. And afterwards, on the 26th?

A. That is all they were doing—all I saw them doing.

Q. Was the work proceeding in any businesslike way?

A. They had no steam up, but were pulling the bags up by hand and throwing them onto the scow.

Q. What experience have you in the matter of stevedoring?

A. I have been connected with it ever since I have been to sea.

Q. Did you make a thorough inspection of the cargo of the "Nippon"?

A. Yes I had a thorough look around.

Q. Within what time do you think you could have taken off the "Nippon" cargo?

A. It all depends on the weather. With the weather they had, I reckon a fortnight ought to have cleared the cargo—all the dry cargo anyhow.

Q. And what would have been the methods employed to take off the cargo?

A. Either put it our with baskets and shovels or else in bags. As I know the weather it was possible to put it out in bulk.

Q. The weather was good, was it?

A. Yes sir.

Q. The fact of the matter is, the weather was good during
336 the whole month of May and June, was it not?

A. All the time I was out there, yes.

Q. When it is fine in Manila it would be fine there, would it not?

A. That don't always follow.

Q. Unless there was a typhoon on?

A. It does not always follow that there would — fine weather there even though it may be here.

Q. Were you ready and willing on the 14th and 15th of May last to take the salvage of the "Nippon" and cargo?

A. Yes. Not myself—Captain Hessell and I, under the name of Hessell & Bailey, or Bailey and Hessell.

Q. Did you have the implements necessary for that purpose?

A. Yes sir, we had. They were not our own, but we had them spoken for—the necessary pumps we wanted.

Q. Do you know anything about China?

A. Yes sir.

Q. Hongkong?

A. Yes, all of the China coast.

Q. What are the means to be obtained in Hongkong for the salvage of vessels?

A. There are three salvage boats in Hongkong and one regular salvage company—one at the Kowloon Dock and one at the Tycoo Dock?

Q. Are they large steamers?

A. One is a large ocean going steamer; the others just tugboats.

Q. What do you know about the labor market in China for work of this kind?

A. Lots of labor to be had there.
Q. How does that labor compare with labor to be had in Manila?
A. Much better than Manila.
Q. Is it to be had in large numbers in Hongkong?
A. As many as ever you want.

337 Cross-examination by Mr. Cohn:

Q. Have you had any experience in discharging copra in bulk?
A. Yes, lots of experience. Not discharging, but I have been on ships discharging and I have seen it discharged.
Q. Have you had any experience in discharging copra in bulk from vessels in a waterlogged condition?
A. No.
Q. Do you know anything about the best methods of discharging copra in a vessel, which is in three layers, one layer submerged at all times, one alternately submerged and drained by the rise and fall of the tide, and the other layer dry?
A. Certainly. The top layer should be taken off first.
Q. Have you had any experience in handling copra that has been submerged in salt water for several days?
A. No, I have never seen a ship with water in her loaded with copra.
Q. Do you know anything about the inconveniences and difficulties of discharging and handling copra?
A. Yes.
Q. What are they?
A. The smells.
Q. What are the effects of that smell?
A. They are bad for everybody.
Q. Bad in what way?
A. It causes all sorts of sickness.
Q. Do they blind the men?
A. Yes.
Q. Do they cause the men's legs to swell?
A. Yes, I believe so. It is a bad gas, like marsh gas, that arises from copra when it has been submerged for a long time.
Q. How long?
A. It would take a long time before you could get it to throw off dangerous gasses.
Q. How long a time?
A. Three weeks.
Q. Do you say that from your own positive knowledge?
338 A. I have never experienced it, but I know that is what happens. It throws off very dangerous gasses.
Q. Would it throw off those gasses in two weeks?
A. I could not say what time. I could not state any time, but I know it does throw off gasses.
Q. Is that true in a measure of vessels laden in bulk in an undamaged condition?
A. No, it throws off a smell but not gas.

Q. Do you know anything of the regulations that obtain in ports where copra is customarily discharged, about the ventilation of the holds for a given number of hours?

A. There are different regulations everywhere. If you load copra in Java you close your hatches up and let it sweat. Other places you open up and give it all the ventilation you can.

Q. Is it not a fact that in European ports where copra arrives, that there are regulations prohibiting persons from going into the holds where the copra has been?

A. No sir.

Q. Have you been in Marseilles?

A. Yes. I have been in all the European ports, Marseilles, Barcelona, Amsterdam, Rotterdam.

Q. Were there no regulations in Marseilles?

A. No sir. The ship leaves the minute she discharges.

Q. How about vessels that do not leave immediately after discharging taking on cargo?

A. No sir, right away. I have discharged copra and commenced to load right away.

Q. Have you ever had any experience with cargoes of copra that have become wet by water coming aboard on the journey?

A. They allow it to sweat and get wet to give it a better turnout at the other end as it pans out better. If you keep your hatches open all the time there is five or ten per cent of a loss.

Q. Have you ever had the experience of a vessel shipping sea water and having the water get into the cargo?

A. I have, a little.

Q. What effect did that have on the part that was wet?

A. None as far as I could see.

Q. How many days out were you?

339 A. About three days out from Batavia.

Q. How many days did it take to arrive at the port of discharge?

A. About 36 days.

Q. Did you notice any of the effects of the salt water on the copra before you arrived at your destination?

A. Yes. It turned black, and threw off a smell.

Q. In your statement that the cargo of the "Nippon" could have been discharged in a fortnight, how many men did you calculate on employing?

A. 100 men two shifts; work them three shifts 8 on and 8 off. Possibly with more men available—150—I would take three shifts 8 on and 16 off.

Q. Your calculations are based on that estimate?

A. Yes sir.

Q. And the ability of the men to keep the eight hour shift?

A. They could do that.

Q. Are you sure?

A. Yes sir.

Q. How do you know that?

A. Considering they work 12 hours here. You can work the same men from 7 A. M. till midnight working loading copra.

Q. Do you know they could work without becoming blind?

A. Putting out the dry copra probably they could do it. I wouldn't say they could do it with wet copra.

Q. When you say you were ready to undertake the salvage work, do you mean Captain Robinson?

A. No. Captain Hessell and I.

Q. Then The C. S. Robinson Co. did not figure in your offer?

A. They had nothing to do with it.

Q. You are familiar with the equipment of the C. S. Robinson Co. and the C. S. Robinson Tug & Lighter Co. are you not?

A. Yes sir.

Q. Have they any salvage equipment?

A. No.

Q. Did they have any in May or June last year?

340 A. No. There is a certain place we can get it at any time that Robinson always uses in all his salvage operations—pumps and gear.

Q. When you say "pumps" do you mean buy them or rent them?

A. Rent them.

Q. How many such pumps did you have available?

A. Five.

Q. What sizes were they?

A. 6 inch, 8 inch, 9 inch, and 2 twelve inch; and Hessell had another one.

Q. Were you approached at any time during the salvage operations by a representative of Erlanger & Galinger in regard to securing an 8 inch pump?

A. Yes sir.

Q. Did you accede to that proposal?

A. No, because I wanted that for our own use if it happened we should get a chance at it.

Q. What prospect did you have?

A. Prospect of the government stepping in and taking away the charters of the vessels.

Q. In other words you were engaged in obstructing the salvage work of Erlanger & Galinger with a view to getting it yourself?

A. I don't see that I was obstructing them.

Q. Were you?

A. I was not.

Q. Were you engaged in assisting it?

A. I was not, no sir.

Q. You obstructed the work to the extent of refusing to divulge where the 8 inch pump could be obtained?

A. Yes.

Q. What was your relation to the salvage work at that time?

A. How do you mean?

Q. What connection did you have with the salvage work, that you refused to divulge the whereabouts of the pump which Erlanger & Galinger was trying to get?

A. I had no connection. Simply that we had been asked
341 to give our price, and we had given our price and were ready to go to work.

Q. When was your price made?

A. Sometime in May—14th, 15th, or 16th, or 17th—somewhere around there.

Q. Whom do you mean by "we"?

A. Hessell and myself.

Q. You say the C. S. Robinson Co. had nothing to do with it?

A. It was in my name—Bailey & Hessell.

Q. Had you anything to do with the salvage of the steamer "Melbourne"?

A. I had all.

Q. When was that salvage?

A. About two months ago.

Q. After the salvage of the "Nippon" or before?

A. After.

Q. Was that done for the C. S. Robinson Co.?

A. No.

Q. Did the C. S. Robinson Co. have the opportunity to salve that vessel?

A. No, it was taken out in the name of Robinson and Bailey.

Q. Was the salvage offered to the C. S. Robinson Co.?

A. No, it was done by Robinson and myself.

Q. Is it not a fact, Captain Bailey, that the salvage of the "Melbourne" was offered to the C. S. Robinson Co., and that it was considered at a meeting of the board of directors of the C. S. Robinson Co., and that the board of directors of that company refused to have anything to do with it?

A. I believe Robinson did put it up to the board of directors, but I was away.

Q. What action was taken?

A. Robinson told me that had nothing to do with it.

Q. On what ground?

A. On account of money.

Q. Is it not a fact that the C. S. Robinson Co. refused to have anything to do with the "Melbourne" because they had
342 neither the equipment nor the capital to undertake the work?

A. I couldn't say. Robinson told me he had taken the contract out in the name of Robinson & Bailey and the pumps were all ready.

Q. Has the C. S. Robinson Co. ever performed any salvage service during the time that you have been with them?

A. Not to my knowledge.

Q. Was the salvage work undertaken by C. S. Robinson and yourself successful?

A. No, it was a failure.

Q. Did you salve any part of the vessel or cargo?

A. No, nothing.

Mr. Fisher: Did I understand you to say that you had your

preparations all made to go out and undertake the work of salving the "Nippon" if possession had been given to you and Mr. Hessell?

A. Yes sir.

Q. What appliances had you on hand?

A. All the pumps—5 pumps.

Q. I refer more particularly to the appliances you intended to use in handling cargo.

A. The intention was to shovel *shovel* out all dry copra, and we were to get the big lighters of the Insular Lumber Co., which carried four or five hundred tons each, and get the dry copra out and see if we could get the water down.

Q. Did you arrange to get those lighters?

A. We had spoken about them and they promised two—two were available.

Q. Your estimate of two weeks, as I understand it, is the time that you assume would be necessary to get out the dry cargo. Is that correct?

A. That is ample time.

Q. Is that upon the assumption that you would get plenty of men and that you would succeed in getting them to work three shifts?

A. Yes sir.

Q. Did your proposed contract with the underwriters embody any guarantee that you would get the dry copra out in that time?

A. No.

343 Q. Was there any penalty in the event of your failure?

A. It was a clean contract. No cure no pay, with absolute use of the ship and gear.

Q. Do I understand by that that you had to salve all the cargo or that you were to receive pay in proportion to the amount salved?

A. We were to get a certain per cent. of the amount salved.

Q. Your intention was to make use of Filipino laborers from the local labor market?

A. Yes sir.

Q. Then I understand that you had not contemplated getting Chinese laborers from China?

A. We had thought of getting men from Hongkong, but we were satisfied it would have been more advantageous to work with local labor. It was the intention to work with local labor.

Q. How did you intend to remove the lower layer of copra, after you had taken off the stuff you could remove in baskets?

A. We thought we could get the water down and get it all by shoveling in baskets.

Q. Had you any particular scheme in mind in the event you should find it impossible to get the water down? How would you get the copra?

A. The way I worked it out, when we got the dry copra out, we could use a double plunger sand pump, which will handle coal and copra, and when there was sufficient water out we could float her off on the high tide.

Q. At that time had you any exact knowledge as to the extent of the damage to the vessel's bottom?

A. I never put any divers down alongside the ship at all.

Q. In figuring on your plan of taking copra out with the sand sucker pump, what did you propose to do to prevent the pump from becoming clogged with the mats or dunnage?

A. We would have to put it in the center of the hatch. There are no mats in the center of the hatchway.

Q. They use dunnage don't they?

A. They use mats on some ships. It all depends on the way the master wants the ship stowed.

Q. You have had experience in getting labor in Hongkong, have you?

A. Yes sir.

Q. Is it not a fact that those people are slow in getting their gangs together, and it usually takes a long time to get a large supply?

344 A. It all depends on how you want to go at it. You go to a head Chinaman and tell him you will pay so much a man and he will supply all you want.

Q. How long would it take?

A. As a rule, what men you want tomorrow you order today.

Q. If you had been in Hongkong—just landed there with a view to getting together an outfit with a view to removing that copra from the "Nippon", would it not have taken several days?

A. The ship would have been the longest time. The rest would have been easy, seeing that I am acquainted there.

Q. Then you think you could have gotten the labor quickly?

A. I could have had them as quick as I could get the ship.

Q. Have you any idea how long it would take to get a ship?

A. It all depends. You might get one today, or they might be busy and it would take several days.

Q. Are there wrecking companies there that have regular equipment always on hand?

A. Yes. There is a Swedish or Danish company, but at this time the vessel was up in the Red Sea.

Q. Is there any other company?

A. The Kowloon has one and the Tykoo has another.

Q. How long would it take them to get ready?

A. They are always ready. They use them around Hongkong.

Q. Could they get them out in 24 hours?

A. No; two days, I should say.

Q. They would not have the space on board to take all the laborers you would need would they, so that you would need another vessel?

A. I think the Kowloon Dock tug would take all the men.

Q. That vessel would not also be available for carrying the cargo you would take out of the vessel, would it?

A. No; she simple is a tender for the ship.

(Sgd.) ADAM C. BAILEY,

Ced. No. 12247 *issued at Manila, Jan'y* 23, 1914.

345 Defendant then read in evidence, without objection, the deposition of the witness, Capt. CHAS. S. ROBINSON, taken under oath upon notice to plaintiff, which deposition is as follows:

(Title of Court and Cause.)

Be it remembered that pursuant to the stipulation hereunto annexed, and on the 14th day of February, 1914, at Manila, in the Philippine Islands, before me, W. L. Wright, a notary Public in and for the City of Manila, personally appeared Charles S. Robinson, a witness produced on behalf of the defendants in the above entitled action, now pending in said court, who being by me first duly sworn, was then and there examined and interrogated by William J. Rohde, of counsel for defendants, and by F. C. Fisher and Charles C. Cohn, of counsel for plaintiffs; that A. W. Beam, a competent stenographer, took down the questions and cross-questions propounded to the witness and his answers thereto, and transcribed them faithfully and correctly, into longhand; that the testimony of the said witness so taken and recorded was as follows:

Direct examination by Mr. Rohde:

Q. State your name, residence and occupation?
A. Charles S. Robinson; Manila; Stevedore.
Q. How long have you lived in Manila, Capt. Robinson?
A. 34 years.
Q. How long have you lived in the East?
A. 40 years.

346 Q. What has been your business during this period of 40 years?

A. In the stevedoring and salving business 34 years. Chief officer of the Tandjong Pagar, Singapore, 5 years before that.
Q. Do you know where Scarborough Reef is?
A. Yes sir.
Q. Have you ever seen it?
A. Yes sir.
Q. Captain Robinson, how long do you consider that it would have required you to take a cargo of 1850 tons of copra and about 140 tons of general cargo out of a steamer stranded on Scarborough Reef, being in an ordinary ship's position, that is: with only a slight list to starboard of about three degrees, the weather being good, with the means obtainable here in Manila for salvage purposes during the months of May and June of last year?

A. I am in a most favorable position because I have lighters and all I need to do the work. The towboats would have been the only thing in our way. We would have had to depend on towboats. As it turned out, with fine weather. We were running a big risk to send lighters 180 miles, but as it happened to be fine weather the company would have run that risk for the sake of the game, and I would say I could turn to and do the whole job in from 15 to 20 days.

Q. Bring the cargo into a port?

A. No, not the whole cargo. The cargo that was dry and valuable. The cargo that was wet it would all depend upon the strength of the stench of the copra whether the men would be able to work down there or not. That is my position at the present moment with the "San Juan". You say "Within what time would it require to take out the whole cargo out of the "'Nippon'"? I would say that I have 12 lighters available. They would carry on an average of about 75 tons each. Those lighters would be loaded up—under the circumstances we could not load those lighters in less than 2 days to each lighter. It would take two days to go there towing, and it would take close upon two days to come back. We should require if the towboats are available here, we would have to have at least three towboats—large seagoing towboats for the purpose. Eight lighters with three towboats would make a trip there and back under the circumstances in fine weather, they ought to do it in six to seven days. You might put it eight days because you would have to discharge here. It could be discharged in one day. By doing it expeditiously one trip would take seven days.

Q. Each lighter would carry how much?

A. About 75 tons. There is 1800 tons. I reckon it would take 20 days without intermission of any kind because they would have to go backwards and forwards.

347 Q. And the general cargo could have been put on a steamers and brought in—on a towboat?

A. No. You could not put that on a towboat. That would have to go into lighters. It would take two lighters.

Q. What do you know of the means available in Hongkong for salvage purposes?

A. Well, there is any amount of lighters in Hongkong, but I doubt if they would risk their lighters to go all the way across to Scarborough Reef—600 miles—to work that ship—in the China Sea.

Q. Are there salvage steamers there especially built for salvage purposes?

A. There was one called the "Protector" but she was up in the Persian Gulf.

Q. Are there seagoing tugs for salvage purposes?

A. Plenty, yes sir.

Q. What about the labor market in Hongkong for salvage purposes?

A. I don't know anything about that because I have never taken any labor from Hongkong for that purpose. But there are plenty — men in Hongkong. Whether they would go to Scarborough Reef or not, I can't tell you.

Q. But if they would go there would they be good laborers, those to be had there?

A. Yes, you can get good laborers in Hongkong.

Q. And in any quantity necessary?

A. As far as I know. In this instance I don't know if they could be kept at work right through under the conditions, with the stench, I do not know if it would allow the men to work. That is the thing

I am up against and have been up against with the "San Juan", which is a very small boat. I have had four men almost suffocated with the wet copra.

Q. What "San Juan" are you speaking of?

A. The one I am bringing up now.

Q. Where?

A. On the east side of the coast here?

Q. How far from Manila?

A. 550 miles from Manila, but she is within 150 yards of the shore of the mainland.

Cross-examination by Mr. Fisher:

348 You have had considerable general experience in salvage and wrecking work, have you?

A. Yes sir.

Q. Assuming that you had been asked to undertake the work of salving the steamer "Nippon" and her cargo, please state whether or not you would have undertaken that work with the men and material available in Manila, or whether you would have gone to Hongkong and used Hongkong men and material and made Hongkong your base of operations.

A. Certainly not. I would have made Manila my base, which I have always done.

Q. What, if any, advantages do you think you would have in using Manila as a base of operations and using Manila men and materials over men and materials in Hongkong?

A. In the first place, you would lose a lot of time by going across to Hongkong to get those men. That is time lost.

Q. Even if you had been using Chinese labor from Hongkong to remove the cargo from the hold of the "Nippon" would you have used Hongkong or Manila as your base of operations?

A. I would use Manila.

Q. You understand that the situation of the "Nippon" was that she was not only stranded, but that there were holes in her bottom?

A. I know nothing about her condition.

Q. You will please assume the hypothesis in answering these questions that the "Nippon" was stranded on Scarborough Reef: that there were holes in her bottom of such size that she was full of water; that the water in her hold rose and fell with the tides; that the cargo of copra in the hold of the vessel was in three general strata, the top layer being dry and above the highest high water mark, then there being an intermediate layer in which the water rose and fell with the tide, and the third, or lower, layer which was always submerged.

The cargo of copra being in that condition please state what methods you would have used had you been salving the copra in removing it from the hold of the "Nippon" and placing it on board the carrying vessels to bring it to Manila, bearing in mind that you were anxious to avoid all damage, so far as possible, to the dry copra?

A. I would work the vessel as far as was possible to go without any danger to the men.

Q. I mean, what means would you employ in taking the cargo from the hold—the copra from the hold of the vessel for the purpose of conveying it to the carrying vessels to bring it to Manila?

A. I would have to decide that on the spot myself after seeing the conditions. There are various ways. We could turn to with canvas slings and a hoist it in bulk into the lighters. That is
349 one way. The cargo that was available with no danger to the men we could have bagged and discharged it that way. There are various ways of discharging a vessel. The man on the spot has to make up his mind about what he is doing. When you are on the spot you can decide. You can't decide the best way of doing the work on a thing you have never seen. To work from Hongkong and take the cargo to Hongkong you were quite liable to lose your lighters. You have got at least four days of a tow to go to Hongkong, where here you have only 180 miles.

Q. Whether you had sacked the copra in the hold of the "Nippon" or whether you had put it into canvas slings and put it on board the carrying vessels to bring it to Manila, you would have used men in the hold of the vessel to put it into sacks would you not?

A. I would have to do it because to do anything else you could only work in the hatches and the sides would all have to be left alone. I could work with sacks or bags but I could not go under the decks with grabs. You would have to dig right down in the center and it would be no earthly use. You would have to work your men between decks with the men in the holds fore and aft of the hatches, or else you could not get at the largest part of the copra.

Q. I think you stated you had lighters available at the time the "Nippon" was stranded which might have been used in the salvage work?

A. We had 14 lighters here doing nothing laid up doing absolutely nothing. We could have sent those lighters right away at a big risk to the company.

Q. Are those lighters used in river and harbor work here?

A. In harbor work.

Q. Have any of those lighters seagoing licenses?

A. Not one. We would have to get a special license.

Q. Are there other lighters in Manila of a similar type to those belonging to your company which were available at that time?

A. That I can't say.

Q. As a general proposition you are familiar with the number and kind of lighters in the bay, are you not?

A. At that time stevedoring seemed to be dead and I don't doubt but that there was.

Q. You spoke of some wrecking being done on the steamer "San Juan". That is a wrecked steamer which you are now engaged in salving?

A. Yes sir.

350 Q. How big is she?

A. 500 tons.

Q. Was there some copra cargo in her?

A. 100 tons,

Q. Was that wet with salt water?
A. Certainly. It was completely submerged.
Q. What effect have you noticed the salt water had on that?
A. It is unbearable. We can't get down the No. 2 hatch yet. I have had four men almost suffocated—stretched out and almost suffocated. I had to bring them ashore.
Q. How does this stench, or the fumes, of the copra effect them?
A. They faint right off and are perfectly helpless.
Q. How soon after the ship "San Juan" stranded did you get down there to go aboard of her?
A. It was at least two weeks.
Q. Did you open her hatches?
A. They were all open, and her ports too.
Q. Was this bad smell noticeable at that time?
A. Yes, there was a terrible smell, but that copra was covered with water. It was under the water.
Q. Did you make any effort to salve that copra?
A. We simply as the bags came along in the hatch we let the chain slings down and heaved it up with a winch and threw it overboard.
Q. How soon after you commenced your work on the "San Juan" were you able to bring any of that copra up on deck.
A. We did not attempt to do that in the beginning. I let it lay there and I asked permission from the insurers to allow me to throw it overboard as we could not remain long on board. I got permission of the insurers and I suppose it was a month afterwards before we started to discharge it.
Q. Did you open any of the sacks?
A. They were all rotten. No whole sacks came up.
Q. Was any portion of that copra in such condition as to make it worth saving when you brought it up to the surface?
A. No, not the lot we had. It was all under water the whole time, and salt water soaked so much that in the forehold we have
351 eighteen inches of pure oil on top of the water.
Q. Was any of that oil noticeable on top of the water in the hold of the vessel when you first went down there?
A. Yes sir.

Cross-examination continued by Mr. Cohn:

Q. The C. S. Robinson Co. since its organization has never performed any salvage service?
A. No, not the Company.
Q. During the year 1913 the C. S. Robinson Co. had an opportunity to perform some salvage services on the steamer "Melbourne" did it not?
A. Yes.
Q. It did not undertake that salvage work?
A. I called a meeting of the directors and asked them if they were willing to risk the money to salve the "Melbourne" and the directors decided not to do so.

Q. What amount of money was required for that salvage?

A. P15,000.

Q. Is it not a fact that the opportunity to salve the "Melbourne" was refused by the directors on the ground that they did not have that amount to invest in the salvage service?

A. Quite right.

Q. Nor salvage equipment?

A. Quite right.

Q. And you were a member of that board?

A. Yes.

Q. And that action had your approval at the time?

A. It did not have my approval, but the majority of the directors decided that they would not spend the money.

Q. You were one of the majority?

A. I left myself out. I put it before the directors. I said I am going to undertake this salvage and I wish to give the company the preference if they will turn to and guarantee the money in the Hongkong & Shanghai Bank, I will work for the company. Otherwise I will undertake to do it with a private syndicate.

352 Q. In the argument on the proposition did you not argue with the majority against the company doing this salvage work?

A. If you remember, Mr. Cohn, I was quite neutral. I left it with the majority to decide upon it. You and Mr. Gibbs being a majority I would not vote one way or the other, being a party interested.

Q. Is it not a fact that at that meeting the minority, consisting of one director, he engaged in personal debate with you on the subject of the propriety of the company borrowing the money to undertake the salvage work, and that you argued in opposition to his proposal?

353 A. About him finding the money for the company himself, yes.

Defendant then read in evidence, without objection, the deposition of the witness, A. F. PETERS, taken under oath upon notice to plaintiff, which deposition is as follows:

(Title of Court and Cause.)

Be it remembered that pursuant to stipulation, and on the 9th day of February, 1914, at Manila, P. I., before me, Jose M. McMicking, Clerk of the Court of First Instance of the City of Manila, personally appeared A. F. Peters, a witness produced on behalf of the defendants in the above entitled action, now pending in said court, who being by me first duly sworn, was then and there examined and interrogated by William J. Rohde, Esq., of counsel for defendants, and by F. C. Fisher, of counsel for plaintiffs; that the testimony of said witness was taken down by A. W. Beam, a competent stenographer, and afterwards transcribed into longhand as follows:

Direct examination by Mr. Rohde:

Q. State your name, age, residence and occupation?
A. A. F. Peters; 24; Manila; merchant.
Q. Did you ever visit the steamer "Nippon" on Scarborough Reef?
A. Yes sir.
Q. How many times?
A. Only once.
Q. What date was that?
A. We left on the 14th and arrived on the 16th of June.
354 Q. Who were with you?
A. Mr. Lebreton, Mr. Lombeck, Captain Hessell. Those were the people from Manila.
Q. Were you prevented from doing anything that you wanted to do?
A. The second time we were not allowed to go on board at all.
Q. Did you want to do anything about the vessel?
A. Yes, we wanted to use some divers.
Q. And were you prevented?
A. Yes, sir, we were.
Q. By whom?
A. Mr. Ben Taylor.
Q. How was the weather when you were out there?
A. Calm.
Q. Was there not a swell.
A. A wee bit.
Q. No sharks?
A. No.
Q. Did you look to see?
A. Yes I did.
Q. What was the purpose of your visits there at that time?
A. To make a report and connect with a party from Hongkong.
Q. On whose behalf did you go out there?
A. On behalf of the underwriters.

355 Defendant then read in evidence, without objection, the deposition of the witness, A. WEGENER, taken under oath upon notice to plaintiff, which deposition is as follows:

(Title of Court and Cause.)

Be it remembered that pursuant to the stipulation of the parties hereto, and on the 9th day of February, 1914, at Manila, P. I., before me, Jose M. McMicking, Clerk of the Court of First Instance of the City of Manila, personally appeared A. Wegener, a witness produced on behalf of the defendants in the above entitled action, now pending in said court, who being by me first duly sworn, was then and there examined and interrogated by William J. Rohde, Esq., of counsel for defendants, and by Mr. C. C. Cohn, of counsel for plaintiffs; that the testimony of said witness was taken down

by A. W. Beam, a competent stenographer, and afterwards transcribed into longhand as follows:

Direct examination by Mr. Rohde:

Q. Please state your name and residence.
A. A. Wegener, Manila.
Q. Did you ever see the S. S. "Nippon"?
A. Yes, sir.
Q. Did you see it at various times?
A. Yes, sir; 3 times.
Q. Where was she when you saw her?
A. I saw her first on May 16th; second on the 26th; third on the 2nd day of June.
356 Q. Where was she at that time?
A. On Scarborough Reef.
Q. What kind of weather was there on those three visits?
A. First time there was a slight swell; second and third times very calm.
Q. The sea was calm?
A. Yes sir.
Q. What was being done at the various times that you were there, Mr. Wegener, on board the ship?
A. First time there was very little. People standing around doing nothing—nearly nothing.
Q. On the 16th?
A. Yes sir. Second time I have seen the pumps which was to be installed in hold No. 2; and the third time they were unloading copra on a wooden scow.
Q. Was there only one scow there?
A. I have seen only one scow.
Q. When you were there the second time on the 16th?
A. Nothing. The first time was the 16th, the second the 26th.
Q. On the first time nothing was being done aboard ship?
A. No. There was nothing—nearly nothing. I have seen very little, sir.
Q. Was there a great deal of dry copra aboard the "'Nippon" when you were there on the 26th?
A. Yes, in No. 1 plenty of dry copra.
Q. Was dry copra, or the copra in the hold, a good place to sleep upon at that time?
A. I don't know. I have seen some people sleeping.
Q. On the copra?
A. Yes, in No. 1.
Q. How many?
A. About two or three laborers.
Q. At what time of the day was that?
A. It was on the 26th, the second time I went out.
Q. Were they *waked* up by anybody?
357 A. No sir.

Mr. Fisher: Who was on board when you were out there on the 16th?

A. I met Ben Taylor and some Americans; I don't know the names.

Q. Were there any natives on the boat?

A. Yes sir.

Q. How many?

A. I can't tell; I have seen plenty.

Q. How long were you there then?

A. About 9 in the morning until one in the afternoon.

Q. On the second occasion you were out there. How long were you there?

A. About four or five hours I have been on board the "Nippon."

Q. Who was there at that time besides yourself?

A. Mr. Yuill of Ker & Co., Captain Eggert, Mr. Miller, Capt. Hessell, Capt. Bailey and myself.

(Sgd.) A. WEGENER.

Ced. No. F 6079, issued at Manila, Jan. 9th, 1914.

358 Defendant then read in evidence, without objection, the deposition of the witness, Mr GUSTAV STROEBEL, taken under oath upon notice to plaintiff, which deposition is as follows:

(Title of Court and Cause.)

Be it remembered that pursuant to stipulation, and on the 9th day of February, 1914, at Manila, P. I., before me, Jose M. McMicking, Clerk of the Court of First Instance of the City of Manila, personally appeared Gustav Stroebel, a witness produced on behalf of the defendants in the above entitled action, now pending in said court, who being by me first duly sworn, was then and there examined and interrogated by William J. Rohde, Esq., of counsel for defendants, and by Mr. F. C. Fisher, of counsel for plaintiffs; that the testimony of said witness was taken down by A. W. Beam, a competent stenographer, and afterwards transcribed into longhand, as follows:

Direct examination by Mr. Rohde:

Q. Please state your name, age, residence and occupation.

A. Gustav Stroebel; 42 years; Santa Mesa No. 17; merchant.

Q. How long have you been a resident of the Philippine Islands?

A. Since 1895.

Q. Did you ever have any business relations with the S. S. "Nippon"?

A. Yes, we were appointed agents.

Q. Agents of whom?

359 A. For the owners of the cargo.

Q. And before that, were you the agents and in other particulars interested in the "Nippon"?

A. We were the agents and underwriters.
Q. Were you such agents in May last year?
A. Yes sir.
Q. From what time on?
A. We were agents for them permanently.
Q. Did you ever see the Director of Navigation, Mr. Helm, in relation to the S. S. Nippon"?
A. Yes sir.
Q. When for the first time?
A. 14th May in the evening, at his house.
Q. Had you written to him before?
A. Yes we wrote him in the morning of the 14th.
Q. Have you a copy of that letter?
A. Yes sir (produces copy).
Q. I show you copy of a letter in the files of this case, a part of Exhibit "B" of plaintiff, on page 6 of said exhibit, which is dated May 14, 1903, and signed by Struckmann & Co. Is that a copy of the letter?
A. Yes, that is the letter.
Q. At what time was that send to Mr. Helm?
A. It has been in his office at 11 A. M.
Q. Did you receive any reply to that letter?
A. Not a written reply. The letter was delivered to the chief clerk because Mr. Helm was busy and he promised to give us the advice requested, but we never heard anything from him.
Q. How did you come to go to Mr. Helm's house in the evening, Mr. Stroebel?
A. We had been busy all day long to engage to charter a vessel to go out and we could not find a vessel. We could have gotten the "Vizcaya," but I thought the vessel was too big. Now in the evening I met Captain Hessell in his house and he suggested that we go right over to Mr. Helm. "He lives over there and I am personally acquainted with him, and we will see if we can get a coastguard cutter from him."
Q. Then did you go to see Mr. Helm and speak about it?
360 A. We went there and Mr. Helm informed us that he could not give us a coastguard cutter because the only available one had been chartered to Erlanger & Galinger and that it had gone out already, so there was no use to bother about it any more.
Q. That was at what hour, Mr. Stroebel?
A. It was rather late, I could not tell exactly—about 9 o'clock in the evening.
Q. Did you at any time see Mr. Simon Erlanger in the office of the Collector of Customs?
A. Yes sir.
Q. About what time Mr. Stroebel?
A. I must look over the records, I could not tell you now.
Q. About?
A. Sometime in May.
Q. About how many days after?
A. I think it was on the 18th.

Q. Who were present there, do you remember?
A. The manager of Ker & Co.
Q. What is his name?
A. Mr. Underwood.
Q. Who else; was Mr. Cohn there?
A. Mr. Cohn, you, Mr. McCoy, and the law clerk I guess from the Customs, I don't know his name; and Mr. Simon Erlanger, Mr. Reis I guess—I am not sure about Mr. Reis.
Q. Whom did Mr. Underwood represent there?
A. Lloyd's and the Swedish underwriters.
Q. Of what, of the hull or of the cargo?
A. The Swedish underwriters of the hull.
Q. And did he represent the owners of the hull also?
A. Also.
Q. Do you know what occurred there at that meeting, Mr. Stroebel?
A. I wanted to have the sale of the boat that was being salved, and Mr. McCoy said it could not be, that he had to do it.
361 Q. Do you know whether there was any protest made by yourself or Mr. Underwood against Erlanger & Galinger proceeding with the salving of the "Nippon" and cargo?
A. Certainly, we protested.
Q. Have you got the bills of lading?
A. It is only one bill of lading that has been signed for the whole cargo shipped. That is in triplicate. It is for the part shipped in bulk and for the part shipped in sacks.

Mr. Rohde: I now offer the bill of lading in behalf of the defendant, endorsed in blank, to prove their ownership of the cargo.
There being no objections the same was admitted in evidence, marked Defendants' Exhibit No. 1 (omitted from transcript).

Q. I hand you a letter, Mr. Stroebel, and ask you if you or Struckmann & Co. received that letter?
A. Yes, sir.
Q. When did you receive that, the date marked on the letter?
A. Yes, I suppose the 15th or 16th of May.
Q. Did you answer that letter?
A. Yes, sir.

Mr. Rohde: I now offer the letter in evidence on behalf of the defendants.
The letter was admitted in evidence, marked Defendants' Exhibit No. 2, and is as follows:

"Manila, P. I. May 15, 1913. Messrs. Struckman & Co., Manila, P. I., Gentlemen:—As attorneys for Messrs. Erlanger & Galinger of this City, we have just been advised of efforts being made on your part to charter a vessel in this port for the purpose of pro-
362 ceeding to the wreck of the S. S. 'Nippon,' now a total loss on Scarborough reef off the coast of Luzon, for the purpose of attempting to salve said vessel and her cargo. We hasten therefore

to advise you that said vessel and her cargo are now in the lawful possession of Messrs. Erlanger and Galinger who, as salvors of the same, have proceeded with diligence, after the abandonment of the vessel to the scene of the wreck with a full and sufficient complement of vessels, apparatus, equipment and men and are now engaged in the said salvage service. This service they are as well able and willing to complete alone as with any assistance that could be hire off and hence no other nor further services or assistance is required or desired.

We deem it important, therefore, to advise you of the present situation in order that you may be spared the useless expense of undertaking an unnecessary expedition, and may be duly advised that we, as first salvors of an abandoned vessel, are in possession and are able and willing to complete the salvage as well as could be done by any means which are locally available.

If, notwithstanding this notification you shall see fit to persist in dispatching an independent salvage expedition we shall be compelled to insist upon our rights of possession, and if ousted therefrom by you, to claim for our own benefit and use every act and every service performed by you. Sincerely yours, (Sgd.) Haussermann, Cohn & Fisher."

Mr. Rohde: I hand you copy of a letter and ask you what it is?
A. That is the answer.
Q. When did you send that answer?
A. On the 15th—or we received the letter on the 15th.

363 Mr. Rohde: I now offer the answer in evidence on behalf of the defendants.

The copy was admitted in evidence, marked Defendant's Exhibit No. 3, and is as follows:

"MANILA, May 15th, 1913.

Messrs. Hausserman, Cohn & Fisher, Manila.

GENTLEMEN: We acknowledge receipt of your today's letter and beg to call your attention to the following advertisement which we caused to appear in several local newspapers.

Notice.

Notice is hereby given to all the world that nobody is permitted to go on board the Swedish Steamer "Nippon" at present in Scarborough Reef off the coast of the Philippine Islands, or to remove any part of her cargo without permission of the undersigned.

Any person taking property from said ship without our permission will be considered by the undersigned owners as taking their property without their consent and will be called to account for the same under the laws relating to piracy on high seas and so forth.

We further state that the owners and underwriters of the cargo absolutely prohibit any person with interfering with the cargo which is their property and is in as safe a condition as they desire to have the same at the present time.

If you obstruct or cause to obstruct the inspection of our representatives with regard to the actual condition of steamer and cargo we will endeavor to hold you responsible therefor. Please note that the cargo is not at all abandoned.

Yours truly,
(Sgd.) STRUCKMAN & CO."

364 Q. What is this paper, Mr. Stroebel (hands witness paper)?
A. It is a letter we wrote to Erlanger & Galinger on the 16th of May.
Q. Was that delivered to Erlanger & Galinger?
A. Certainly. That is, this is a copy of the original.
Mr. Rohde: I offer this letter on behalf of the defendants and as that it be admitted.
The letter was admitted in evidence and marked Defendant's Exhibit No. 4 and is as follows:

"MANILA, May 16th, 1913.

Messrs. Erlanger & Galinger, Manila.

GENTLEMEN: We are informed that you are making preparations to take from the Swedish ss. "Nippon" on Scarborough Reef the cargo of copra in the belief that you are salving the same. We notified your attorney yesterday that we desire no interference with the cargo of said ship and protest against the same.

Please take notice that we ourselves as representatives and the underwriters have for the last few days taken steps to safeguard our property, the cargo of said vessel and are amply able to do so.

Any interference on your part with the cargo could only make the operations of experienced seamen more difficult.

We therefore request you: respect our property rights and let us take care of our own affairs.

Our representative leaves for the scene on ss. Ant. M Poizat with experienced salvors men this afternoon.

Yours very truly,
(Sgd.) STRUCKMAN & CO."

365 Cross-examination by Mr. Fisher.

Q. Mr. Strobel, you stated, I believe that you had an opportunity to charter to charter the S. S. "Vizcaya" on May 14th from Messrs. Ynchausti & Co.
A. Yes sir.
Q. And that you didn't take it because you thought it was larger than necessary.
A. I didn't take her because Erlanger & Galinger took her. We were going around Manila to see what ships were available and when I came back to Ynchausti & Co. they had contracted to Erlanger & Galinger.
Q. At what time did you call?
A. About 10 o'clock.
Q. In the morning of the 14th.
A. Yes.

Q. Weren't you offered the charter of the "Elcano"?
A. No: I didn't ask for her.
Q. Did you inquire of Ynchausti & Co. whether any other vessels were available?
A. Yes, sir.
Q. What did they inform you?
A. They informed me they would eventually charter vessels to us as they came in from the Provinces.
Q. I mean were any other vessels available on the 14th?
A. I don't think so.
Q. Are you acquainted with Mr. Patrick Miller?
Q. He is the local agent of Lloyd's?
A. Acting, yes.
366 Q. And Mr. C. B. Nelson, are you acquainted with him?
A. I know him by sight.
Q. He is the agent for the Bureau Veritas?
A. Yes.
Q. Did you have any conversation with those gentlemen about the 13th of May in relation to chartering a vessel to go out to Scarborough Reef.
A. We got notice on the 14th so we could not talk with them on the 13th.
Q. What notice did you get on the 14th?
A. Notice to look after the interests of the underwriters of the cargo.
Q. You were aware of the stranding of the vessel by that time were you not?
A. Yes, sir.
Q. Do you recall about what time it was you got instructions?
A. On the 14th, in the morning, by cable.
Q. Do you recall approximately what time it was when you received that cable?
A. In the morning early, 8 o'clock.
Q. Prior to receiving that cable had Messrs. Miller and Nelson reported to you the desirability of chartering a vessel to go out to the reef?
A. They did not—no—prior to that date. Prior to the 14th nobody knew we were appointed agents.
Q. I understood that you had acted as agents sometime prior; that you were the permanent agents?
A. As soon as we knew there was an interest. Before the 14th we did not know there was an interest of our parties in the "Nippon."

(Sgd.) G. STROEBEL,
Ced. No. F 15,839, *Issued at Manila Feb.* 2, 1914.

367 Upon the evidence, oral and documentary, above set forth and mentioned, the case was submitted for decision.

Thereafter, to-wit, on the 13th day of May, 1914, the Hon. A. S. Crossfield, Judge of the Court of First Instance of the City of

Manila, before whom the cause was tried, rendered his decision therein in words and figures as follows:

368 (Title of Court and Cause.)

"This case is before the court for trial upon an amended and supplemental complaint by plaintiff against the defendants to recover "the sum of one hundred thousand pesos (P100,000), and costs and "expenses as compensation for the salvage of the cargo of the S. S. "'Nippon', alleging that plaintiff had salved the said steamship and "cargo between the 14th day of May and the 26th day of July, 1913, "the steamer and cargo having been stranded on Scarborough Reef "while on a voyage between Manila and Singapore and having been "abandoned and left derelict by the ship's master and crew.

"The Insular Collector of Customs appeared and answered admitting paragraphs 1, 2, 4, 6 and 7 of the complaint and neither "denying or admitting the remainder, and further answered alleging that he had no interest in the action except that he had taken "possession of the wrecked SS. "Nippon" and of its cargo which was "salved and held the same for the benefit of all parties interested.

"That a portion of the cargo which was perishable had been sold "and abstract of which was attached to the answer showing the net "proceeds of all sales after deducting Government charges to be "P147,806.65.

"That another portion was held on deposit, a list of which was "attached to the answer, the latter being foreign merchandise and "in case it should remain or be sold in the Philippine Islands the "Government of the Philippine Islands would have a lien for cus-
"toms duties thereon, and that the Government of the Philip-
369 "pine Islands had a lien upon all the cargo coming into its
"hands for storage and arrastra charges, and subsequently "made supplemental answer alleging that certain of the cargo listed "in his original complaint had been exported from the Philippine "Islands, and that certain others had been wrongfully described in "the original list, and that additional Government charges had been "made against the copra which left the net product therefrom at "P142,657.05.

"The Oelwerke Teutonia, a corporation, having been included as "a defendant under a fictitious name, answered alleging that it was "a corporation under the laws of the German Empire; that it was "the owner of the copra cargo valued at four hundred thousand pesos "(P400,000.00) on board the S. S. 'Nippon', when it stranded as "alleged in the complaint; admitted paragraphs 1 to 7, inclusive, "and 17 and 18 of complaint; and denied the rest of the complaint, "except that the SS. 'Nippon' was stranded and was visited by the "SS. 'Manchuria' and by the coast guard *at* boat 'Mindoro' on May "13, 1913; that the boat 'Mindoro' was chartered by plaintiff; that "the plaintiff took possession of the 'Nippon' and cargo; that a "portion of the cargo was brought to Manila; that the SS. 'Nippon' "was floated and brought to Manila, and that part of the cargo had "been delivered to the Insular Collector of Customs by whom it was

"sold, and set up as a counter claim that it owned the cargo of "copra on board the SS. 'Nippon' of the value of P400,000.00; that "after the SS. 'Nippon' stranded it was first visited by the SS. 'Man-
"churia', upon which the master and crew of the vessel em-
370 "barked for the purpose of going to Hongkong to obtain
"means for salving the steamship and cargo and did not "abandon it; that plaintiff knew before it incurred any expense in "salving that the master of the stranded steamship had proceeded "on the SS. 'Manchuria' to Hongkong, from whence the plaintiff "could easily have ascertained what the master's intentions were; "that when plaintiff took possession of the stranded steamer it was "not in imminent or immediate danger; that plaintiff is an ordi-"nary mercantile partnership which has no knowledge of maritime "affairs and had no proper means for making salvage and that it so "badly conducted the salvage of defendant's copra as to cause de-"fendant a loss of P177,432.00.

"The New Zealand Insurance Co. having been included as a de-"fendant under a fictitious name answered alleging that its sole in-"terest in the action was as an insurer and assignee of the owners of "thirty-three (33) crates of Agar Agar, which was a part of the "cargo of the stranded SS. 'Nippon' and which had been delivered "to the Insular Collector of Customs upon the agreement of this "defendant to pay plaintiff such amount as might be allowed plain-"tiff for the salvage thereof, and that its value was approximately "P5,635.00.

"The Tokio Marine Insurance Co. having been included in the "complaint under a fictitious name answered alleging that it was "the insurer and assignee of one thousand cases of bean oil and two "cases supposed to contain bamboo lacquer work, a part of the
"cargo of the stranded S. S. 'Nippon', the first of which was
371 "landed by plaintiff and sold by the Collector of Customs
"as perishable property for P4,741.36, to which amount this "defendant was entitled subject to Government lien for duties and "charges and plaintiff's lien for salvage services, and that the value "of the second was unknown and was subject to similar liens as the "first.

"The Thames and Mersey Marine Insurance Company having "been included in the complaint as a defendant under a fictitious "name answered alleging that it had an interest in the cargo of "the stranded SS 'Nippon' only as an insurer by way of reinsurance "amounting to P6,500.00 upon certain copra which was a part of "the cargo of the stranded SS 'Nippon', and that its interest was "already represented by the immediate insurance of the copra, and "that the copra which had been salved had been sold by the Insular "Collector of Customs, who held the proceeds subject to this court's "orders.

"Messrs. C. C. Cohn and F. C. Fisher appeared for the plaintiff; "Mr. W. J. Rohde for the Oelwerke Teutonia; Mr. W. H. Lawrence "for the New Zealand Insurance Company, Ltd., The Tokio Marine "Insurance Company, and the Thames & Mersey Marine Insurance

"Company, and Mr. J. W. Ferrier for the Insular Collector of Cus-
"toms.

"From the evidence presented at the trial I find that the SS 'Nip-
"pon' left the Port of Manila on May 7, 1913, bound for Singapore.
"Immediately after clearing Manila Bay she encountered rough
"weather, which grew worse, until on the 8th day of May, 1914, at
"about four o'clock in the afternoon, she went aground on
372 "Scarborough Shoals and was stranded there at a distance
"of about one hundred and thirty (130) miles from the
"nearest coast line.

"That on the following day the First Officer put off from the
"steamer with one of the only two remaining life boats with a view
"to going to the nearest shore and landed at Santa Cruz in Zambales
"Province and from there telegraphed Manila of tht SS 'Nippon's
"plight.

"That the Government coast guard boat 'Mindoro' immediately
"left for Scarborough Shoals to render assistance and upon arriving
"found that the Master and the remainder of the crew of the SS
"'Nippon' had embarked on the SS 'Manchuria' and were bound for
"Hongkong, leaving the SS 'Nippon' with no one board.

"That being informed that the SS 'Nippon' was in a bad condition
"she was boarded from the SS 'Mindoro' and some baggage taken
"off when the 'Mindoro' left and proceeded to Santa Cruz, Zambales,
"where she picked up the 1st officer and members of the crew with
"him and proceeded to Manila where she arrived on May 14, 1913,
"and gave information of the condition of the SS 'Nippon', and
"soon thereafter, and on the same day, the plaintiff chartered the
"'Mindoro' and immediately sent its representative with a few Fili-
"pino laborers to the SS 'Nippon', who took possession of her, and
"later the plaintiff sent other vessels with laborers and really com-
"menced the salvage of the SS 'Nippon', about May 18th, 1913, and
"continued the salvage until all the cargo of value sufficient
373 "to warrant saving was brought into Manila, the last being
"the latter part of June, 1913, having jettisoned a part of the
"copra cargo which was found to be in such condition as not to be
"worth saving.

"That the salvage of the 'Nippon' was continued until finally she
"was floated and brought into Olongapo early in July, 1914, and
"finally to Manila in the latter part of July, 1914.

"That in the meantime the Master of the 'Nippon' proceeded to
"Hongkong and took some steps looking to a return to the 'Nippon'
"and saving her and her cargo, but nothing definite was done and he
"finally came to Manila where he protested against the action of
"plaintiff in trying to salve the 'Nippon' and her cargo and de-
"manded possession from plaintiff after it had actually been engaged
"in the salvage of the cargo for some days, and possession was re-
"fused.

"That Messrs. Struckman & Co., representing the underwriters of
"the SS 'Nippon', took some steps looking to the salvage of the
"'Nippon' on May 14, 1913, but did not take any final action until

" the plaintiff had commenced salvage, when they demanded posses-
" sion, which was refused.

" That Ker & Co., representing the owners of the SS 'Nippon',
" after the arrival of the Master in Manila took some steps looking
" to the salvage of the steamer and cargo, but were refused possession
" by the plaintiff for that purpose.

" That the cargo salved was brought into Manila by plaintiff and
" delivered to the Collector of Customs, who immediately sold
374 " that which was perishable and upon agreements delivered
" to the owners, under order of the court, twenty-five (25)
" boxes of refined camphor valued at P1850 to Struckman & Co. for
" Carl Maeckler, thirty (30) crates of Agar Agar, valued at 14,600
" francs or P5,635 Philippine currency, to W. F. Stevenson & Co.,
" representatives of the New Zealand Insurance Co. Ltd., and one
" case of curios valued at P150, to whom does not appear, and there-
" after sold the balance of the cargo received which could be sold and
" destroyed a small balance unsaleable.

" That the total net proceeds of the sales after deducting all proper
" charges thereon amounted to P148,596.73 of which amount P142,-
" 657.05 was deposited with the Hongkong & Shanghai Banking
" Corporation drawing interest.

" That the total net expenses incurred by plaintiff in making sal-
" vage of the SS 'Nippon' and cargo, properly chargeable as salvage
" expenses appear to be approximately P112,639.05.

" That by agreement between plaintiff and the owners of the
" SS 'Nippon' the steamer itself was released and delivered to the
" owners in consideration of the sum of P145,800.

" The defendant Oelwerke Teutonia insists that the salvage was
" entered upon by plaintiff as a pure speculation, to the exclusion
" of the owners, and that it was not conducted so as to get the best
" results, and that the owners were injured by plaintiff's interference
" and subsequently by their refusal to surrender possession so
374*a* " that the owners could make their own salvage.

" There is no question but that the plaintiff entered upon
" the salvage as a commercial venture and not exactly as salvage
" where one discovers a vessel at sea.

" At the time plaintiff commenced the attempt to salve what was
" possible of the SS 'Nippon' and cargo it was justified from all the
" conditions existing in believing that it had been abandoned and in
" taking possession, even though the Master of the vessel intended
" when he left it to return and attempt salvage.

" Such intention, if it existed at all, does not appear to have been
" very firmly fixed considering the leisurely manner in which the
" Master proceeded after he reached the port of Hongkong.

" Considering that the steamship was supposed to be in extremis
" and liable to become a total loss at any time no one interested,
" either the Master or owners of the ship or cargo or the insurers
" seem to have thought that there was any hurry to make salvage and
" only took any positive steps in relation to salvage after the plaintiff
" had taken its chances and had gone ahead.

" Undoubtedly the persons interested in the ship and cargo had a

" prior right as against anyone else to save that in which they were " interested and I am of the opinion that at any time after plaintiff
" had commenced the work of salvage the interested parties
374*b* " would have been entitled to the possession of all the prop-
" erty in which they had an interest upon satisfying plaintiff " or guaranteeing to plaintiff satisfaction for the expenses which they " had incurred in connection with the salvage whatever it might be " and the salvage which they were then entitled to.

" This, however, none of them did but contented themselves with " making demands for possession without arranging for compen- " sating plaintiff for the salvage work already done but only talked " about it.

" I must conclude that the plaintiff was entitled to commence sal- " vage proceedings and to continue until it was compensated for its " services or met with loss.

" I am of the opinion that the counter claim for damages presented " by the defendant "Oelwerke Teutonia" is not sustained by the evi- " dence.

" While the plaintiff entered upon the salvage proceedings without " proper means and not being adapted by their business to conduct " such work, and while it may appear that possibly the salvage " might have been conducted in a better manner and have accom- " plished somewhat better results in the saving of the copra cargo, " yet it appears that they quickly remedied their lack of means and " corrected the conduct of the work so that it accomplished fairly " good results.

" It does not appear from the evidence that anyone then or sub- " sequently suggested or found any other course which might have
" been pursued and which would have brought better results.
374*c* " From the view I take of the matter the only question for
" determination is the percentage of the salvage made which " the plaintiff is entitled to for its services.

" The plaintiffs never placed themselves or their property in " jeopardy.

" The only jeopardy was of that which they hired in order to " carry out the commercial venture.

" They are entitled to considerable consideration for taking the " risk of investment which they did when at any time their efforts " may have been in vain and they would have received no return " for their investment and would have suffered large loss.

" The plaintiff thinks it should recover all the expenses incurred " in making the salvage and one-half of the value of the property " salved, and that the greater portion of the expenses should be " charged to the copra salved, while the defendant 'Oelwerke Teu- " tonia' is of the opinion that the plaintiff should have nothing of " the value of the copra salved and should pay damages for not " salving a greater value.

" I can but conclude that neither claim is just, and I conclude " that all the cargo and the vessel itself are equally chargeable with " the expenses of salvage.

" Two of plaintiff's witnesses, Mr. Bailey and Mr. Rutledge, tes-

"tified that it was necessary to salve the cargo before the vessel "could be salved.

374*d* "I further conclude that the plaintiff is entitled to re- "cover one-half of the net proceeds from the property salved "and sold, which has nothing to do with the steamship itself, and "one-half the value of the property delivered to claimants.

"They are not first entitled to deduct their expenses and then "take a moiety of the property salved because the expenses were "their risk in making the venture.

"The Oelwerke Teutonia is entitled to one-half of the net pro- "ceeds of the copra salved.

"The Tokio Marine Insurance Co. is entitled to one-half of the "net proceeds of one thousand (1000) cases of vegetable oil.

"There is no evidence as to the ownership of other property "salved and sold by the Insular Collector of Customs.

"Let judgment be entered in favor of the plaintiff, Erlanger & "Galinger, for one-half of the net proceeds of sales, amounting to "P74,298.36 and one-half of the interest accruing thereon, and "against Carl Maeckler for the sum of P925, and against the New "Zealand Insurance Company, Ltd., for the sum of P2,800, and "against whomever the two cases marked R. W. Copenhagen were "delivered to for P75, and in favor of the Tokio Marine Insurance "Company for the sum of P2,370.68 out of the proceeds of the sale "of one thousand (1000) cases of vegetable oil, and in favor of the ""Oelwerke Teutonia", for the sum of P71,328.53, now deposited "with the Hongkong & Shanghai Banking Corporation, together "with one-half of the interest accruing thereon.

"No costs will be taxed. Manila, P. I., May 13, 1914.

"(Sgd.) A. S. CROSSFIELD, *Judge.*"

375 Due notice of the above decision having been given, the plaintiff and the defendant, Oelwerke Teutonia, duly excepted thereto in writing within the time allowed by law, and gave notice in writing of their respective motions that the decision rendered by the trial judge in the said cause be set aside and a new trial granted, said motions on behalf of each of the said parties being made upon the ground that the said decision was plainly and manifestly against the weight of evidence and that it was contrary to law; both of which motions were denied, after which denial each of the parties duly excepted in writing and gave notice in writing of their intention to remove the case to the Supreme Court of the Philippine Islands by Bill of Exceptions for review upon the law and the facts.

Thereafter, within the time prescribed by law, plaintiff herein and defendant, Oelwerke Teutonia, respectively prepared and presented to the trial court their Bills of Exceptions, which were duly allowed and certified by the trial court, and lodged in the Supreme Court of the Philippine Islands, together with all the evidence, oral and documentary, adduced in the course of the trial of the cause.

That thereafter and within the time prescribed by the rules of the

Supreme Court of the Philippine Islands the plaintiff filed its assignments of error in words and figures as follows, to-wit:

"Error No. 1. The Court erred in ruling that the plaintiffs were " not entitled to a reimbursement of their expenses, out of the gross
" value of the salved property, before the division of the re-
376 " mainder into moieties between the salvors and the claimants.

"Error No. 2. The Court erred in holding that the cargo " and the vessel are equally chargeable with the expenses of salvage.

"Error No. 3. The Court erred in refusing to award the plaintiffs, " out of the proceeds of the sale of the cargo, the sum of P28,755.86, " as compensation and the sum of P98,720.00, as reimbursement of " expenses, or a total of P127,475.08.

"Error No. 4. The Court erred in awarding unto the claimant, " Oelwerke Teutonia, the sum of P71,328.53, or any part thereof, " out of the proceeds of the salved cargo.

"Error No. 5. The Court erred in denying the motion of the " plaintiff for a new trial."

That thereafter and within the time prescribed by the rules of the Supreme Court of the Philippine Islands, the defendant, Oelwerke Teutonia, filed its assignments of error in words and figures as follows, to-wit:

I.

The Court below erred in finding that the plaintiffs are salvors of the copra in question.

II.

The Court erred in holding that the plaintiffs are entitled to recover one-half of the proceeds of the copra.

III.

The Court erred in rendering judgment in favor of plaintiffs for half of the proceeds of the copra.

377 IV.

The Court erred in disallowing the defendant's counter-claim.

V.

The Court erred in overruling defendant's motion for new trial.

That thereafter the said cause came on for hearing before the Supreme Court of the Philippine Islands upon the appeals interposed by the parties plaintiff and defendant, and was submitted to the said Court for decision upon printed briefs and oral argument of counsel for the respective parties.

That thereafter, to-wit, on the 9th day of March, 1916, the Su-

preme Court of the Philippine Islands rendered its opinion and decision in the said cause in words and figures, as follows, to-wit:

Per Curiam:

The facts in this case are as follows:

First. The steampship Nippon, loaded principally with copra and with some other general merchandise, sailed from Manila on May 7, 1913, bound for Singapore. Second. The steamship Nippon went aground on Scarborough Reef about 4.30 in the afternoon of May 8, 1913. Third. Scarborough Reef is about 120 to 130 miles from the nearest point on the Island of Luzon. Fourth. On May 9, 1913, the chief officer, Weston, and nine members of the crew left the Nippon and succeeded in reaching the coast of Luzon at Santa Cruz, Zambales, on the morning of May 12, 1913. Fifth. On May 12, 1913, the chief officer sent a telegram to Helm, the Director of the Bureau of Navigation, at Manila, which was as follows:

SANTA CRUZ, ZAMBALES, May 12, 1913.

Director of Bureau of Navigation, Manila:

Nippon stranded on Scarborough Reef. Wants immediate assistance for saving crew. Boats gone.

12.15 p. m.

(Sgd.) WESTON.

Sixth. On the same day (May 12) at 1.30 p. m., the Government of the Philippine Islands ordered the coast guard cutter Mindoro with life-saving appliances to the scene of the wreck of the Nippon. Seventh. On the same day (May 12) at 3 p. m. the steamship Manchuria sailed from Manila for Hongkong and was requested
378 to pass by Scarborough Reef. Eighth. The Manchuria arrived at Scarborough Reef some time before the arrival of the Mindoro on May 13, 1913, and took on board the captain and the remainder of the crew. Ninth. The Manchuria was still near Scarborough Reef when the Mindoro arrived. The captain of the Manchuria informed the captain of the Mindoro that the captain and crew of the Nippon were on board the Manchuria and were proceeding to Hongkong. Tenth. The captain of the Mindoro offered to render assistance to the captain and crew of the Nippon, which assistance was declined. The Mindoro proceeded to the Nippon and removed the balance of the baggage of the officers and crew, which was found upon the deck. Eleventh. The Mindoro proceeded to Santa Cruz, Zambales, where the chief officer, Weston, and the nine members of the crew were taken on board and brought to Manila, arriving there on May 14, 1913. Twelfth. On May 13, 1913, Dixon, captain of the Manchuria sent the following message:

S. S. "MANCHURIA," May 13, 1913.

All rescued from the Nippon. Stranded on extreme north end of shoal. Vessel stranded May 9. She is full of water fore and aft and is badly ashore. Ship abandoned. Proceed Hongkong.

(Sgd.) DIXON.

The captain of the Nippon saw the above message before it was sent. Thirteenth. On May 14, 1913, the plaintiff applied to the Director of Navigation for a charter of a coast guard cutter for the purpose of proceeding to "the stranded and abandoned steamer Nippon." Fourteenth. The coast guard cutter Mindoro was chartered to the plaintiffs and started on its return to the S. S. Nippon on May 14, 1913. Fifteenth. The plaintiffs took possession of the Nippon on or about May 17, 1913, and continued in possession until about the 1st of July when the last of the cargo was shipped to Manila. Sixteenth. The Nippon was floated and towed to Olongapo where temporary repairs were made, and then brought to Manila. Seventeenth. The Manchuria arrived at Hongkong on the evening of May 14, 1913. When the captain and crew left the Nippon and went on board the Manchuria they took with them the chronometer, the ship's register, the ship's articles, the ship's log, and as much of the crew's baggage as a small boat could carry. The balance of the baggage of the crew was packed and left on the deck of the Nippon and was later removed to the Mindoro, without protest on the part of the captain of the Nippon, as above indicated. Eighteenth. The cargo was brought to the port of Manila and the following values were fixed:

Copra (approximately 1,317 tons) valued at, less cost of sale by Collector of Customs	P142,657.05
General cargo—sold at customhouse	5,939.68
Agar-agar	5,635.00
Camphor	1,850.00
Curios	150.00
Total	P156,231.73

Nineteenth. The ship was valued at P250,000. The plaintiff's claim against the ship was settled for £15,000 or about P145,800.

The plaintiffs brought the present action (August 5, 1913; amended complaint September 23, 1913) against the insurance companies and underwriters who represented the cargo salved from the Nippon, to have the amount of salvage to which the plaintiffs were entitled determined.

The case came on for trial before the Honorable A. S. Crossfield. The Oelwerke Teutonia, a corporation, appeared as claimant of the copra. The New Zealand Insurance Company appeared as insurer and assignee of the owners of 33 crates of agar-agar. The Tokio Marine Insurance Company appeared as the insurer and as-
379 signee of 1,000 cases of bean oil and two cases of bamboo lacquer work; and The Thames and Mersey Marine Insurance Company appeared as a reinsurer to the extent of P6,500 on the cargo of copra. The court found that the plaintiff was

entitled to recover one-half of the net proceeds from the property salved and sold (which has nothing to do with the steamship itself)

and one-half the value of the property delivered to the claimants.

Judgment was entered as follows:

In favor of the plaintiff, Erlanger & Galinger, for one-half of the net proceeds of sales amounting to P74,298.36 and one-half of the interest accruing thereon, and against Carl Maeckler for the sum of P925, and against the New Zealand Insurance Company (Ltd.) for the sum of P2,800, and against whomever the two cases marked R—W, Copenhagen, were delivered to, and for the sum of P2,370.68, out of the proceeds of the sale of 1,000 cases of vegetable oil, and in favor of the Oelwerke Teutonia for the sum of P71,328.53, now deposited with the Hongkong & Shanghai Banking Corporation, together with one-half of the interest thereon.

No costs were taxed.

The Oelwerke Teutonia, The New Zealand Insurance Company (Ltd.), and Erlanger & Galinger appealed from this decision. The Oelwerke Teutonia made the following assignments of error:

(I) The court below erred in finding that the plaintiffs are salvors of the copra in question. (II) The court erred in holding that the plaintiffs are entitled to recover one-half of the proceeds of the copra. (III) The court erred in rendering judgment in favor of the plaintiffs for half of the proceeds of the copra. (IV) The court erred in disallowing the defendants' counterclaim. (V) The court erred in overruling defendant's motion for a new trial.

The New Zealand Insurance Company (Ltd.), made the following assignments of error:

Now comes the New Zealand Insurance Company (Ltd.), defendant and appellant in the above-entitled cause, and avers that in the proceedings in the said cause in the Court of First Instance of Manila, there was manifest error to the prejudice of this appellant, in this, to-wit:

(I) That said court found that plaintiffs are entitled to one-half of the value of thirty crates of agar-agar delivered to this appellant; (II) That the said court ordered judgment in favor of the plaintiffs and against this appellant for the sum of P2,800; (III) That the said court denied the motion of this for a new trial.

The appellants, Erlanger & Galinger, made the following assignments of error:

Error No. 1. The court erred in ruling that the plaintiffs were not entitled to a reimbursement of their expenses out of the gross value of the salved property, before the division of the remainder into moieties between the salvors and the claimants. Error No. 2. The court erred in holding that the cargo and the vessel are equally chargeable with the expense of salvage. Error No. 3. The court erred in refusing to award the plaintiffs out of the proceeds of the sale of the cargo the sum of P28,755.86 as compensation and the sum of P98,720 as reimbursement of expenses, or a total of P127,475.08. Error No. 4. The court erred in awarding unto the claimant Oelwerke Teutonia the sum of P71,328.53 or any part thereof out of the proceeds of the salved cargo. Error No. 5. The court erred in denying the motion of the plaintiff for a new trial.

The assignments of error and the briefs of all of the appellants raise but three questions: (1) Was the ship abandoned? (2) Was the salvage conducted with skill, diligence, and efficiency? (3) Was the award justified?

The general rules and principles governing salvage services and salvage awards are well settled. This branch of the law of the sea dates back to the early history of navigation. We find recorded in the Laws of Oleron which were promulgated sometime before the year 1266 at Article IV:

If a vessel departing with her lading from Bordeaux, or any other place, happens in the course of her voyage, to be rendered unfit to proceed therein, and the mariners save as much of the lading as possibly they can; if the merchants require their goods of the master, he may deliver them if he pleases, they paying the freight in proportion to the part of the voyage that is performed, and the costs of the salvage. But if the master can readily repair his vessel, he may do it; or if he pleases, he may freight another ship to perform his voyage. And if he has promised the people who help him to save the ship the third, or the half part of the goods saved for the danger they ran, the judicatures of the country should consider the pains and trouble they have been at, and reward them accordingly, without any regard to the promises made them by the parties concerned in the time of their distress. (See 30 Fed. Cas., at page 1172).

The courts of the United States and England have, in a long line of adjudicated cases, discussed the various phases of this important subject. In general, salvage may be defined as a service which one person renders to the owner of a ship or goods, by his own labor, preserving the goods or the ship which the owner or those entrusted with the care of them have either abandoned in distress at sea, or are unable to protect and secure. The Supreme Court of the United States and the other Federal Courts of the United States have had occasion numerous times to quote with approval the following definition from Flanders on Maritime Law:

Salvage is founded on the equity of remunerating private and individual services performed in saving in whole or in part a ship or its cargo from impending peril, or recovering them after actual loss. It is a compensation for actual services rendered to the property charged with it, and is allowed for meritorious conduct of the salvor, and in consideration of a benefit conferred upon the person whose property he has saved. A claim for salvage rests on the principle that, unless the property be in fact saved by those who claim the compensation, it can not be allowed, however benevolent their intention and however heroic their conduct. (The Job H. Jackson, 161 Fed. Rep., 1015, 1017; The Amelia, 1 Cranch, 1; The Alberta, 9 Cranch, 369; Clarke vs. Dodge Healy, 4 Wash. C. C., 651; Fed. Cas. No. 2,849.)

In the case of Williamson vs. The Alphonso (Fed. Cas., No. 17,749; 30 Fed. Cas., 4, 5), the court laid down practically the same rule:

The relief of property from an impending peril of the sea, by the voluntary exertions of those who are under no legal obligation to render assistance, and the consequent ultimate safety of the property, constitute a case of salvage. It may be a case of more or less merit, according to the degree of peril in which the property was, and the danger and difficulty of relieving it; but these circumstances affect the degree of the service and not its nature.

In Blackwell vs. Sancelito Tug Company (10 Wall., 1, 12), the court said:

Salvage is the compensation allowed to persons by whose assistance a ship or her cargo has been saved, in whole or in part, from impending peril on the sea, or in recovering such property from actual loss, as in case of shipwreck, derelict, or recapture.

It will be noticed from the above definitions that there are certain definite conditions which must always exist in a case of pure salvage. The Supreme Court of the United States, speaking through Mr. Justice Clifford, in the case of The Sabine (101 U. S., 384) makes those conditions three (p. 384).

Three elements are necessary to a valid salvage claim: 1. A marine peril. 2. Service voluntarily rendered when not required as an existing duty or from a special contract. 3. Success in whole or in part, or that the service rendered contributed to such success.

These are the general principles governing salvage.

The question whether or not a particular ship and her cargo is a fit object of salvage depends upon her condition at the time the salvage services are performed. In the present case the plaintiffs-appellant claim that the Nippon was a derelict or quasi-derelict and that their claim should be adjudged upon this basis. A derelict is defined as

A ship or her cargo which is abandoned and deserted at sea by those who were in charge of it, without any hope of recovering it (sine spes recuperandi), or without any intention of returning to it (sine animo revertendi). Whether property is to be adjudged derelict is determined by ascertaining what was the intention and expectation of those in charge of it when they quitted it. If those in charge left with the intention of returning, or of procuring assistance, the property is not derelict, but if they quitted the property with the intention of finally leaving it, it is derelict, and a change of their intention and an attempt to return will not change its nature. (Abbott's Law of Merchant Ships and Seamen, Fourteenth Edition, p. 994.)

381 This contention of the plaintiffs raises the first question:

(1) Was the ship abandoned?

The defendant-appellant Oelwerke Teutonia contends that the captain and the crew did not leave the ship sine animo revertendi, but that it was their intention to go to Hongkong and procure assistance with which to save the ship and her cargo. Whether the intention to return exists in a particular case is always difficult to determine. It is indeed a rare case when the master of the ship will leave without the intention of returning, if there is the slightest hope of saving his vessel. In the case of The Coromandel (1 Swab., 208) Dr. Lushington said:

It may be perfectly true that the master and these fifteen men, when they had got on board The Young Frederick, and were sailing away to Yarmouth, intended, if possible, to employ steamers to go and rescue the vessel, which was at no great distance. But is not that the case every day? A master and crew abandon a vessel for the safety of their lives; he does not contemplate returning to use his own exertions, but the master hardly ever abandons a vessel on the coast without the intention, if he can obtain assistance, to save his vessel. That does not take away the legal character of derelict. (Norcross vs. The Laura, 14 Wall., 336.)

Judge Crossfield found that,

At the time the plaintiff commenced the attempt to salve what was possible of the S. S. Nippon and cargo, it was justified, from all the conditions existing, in believing that it had been abandoned and in taking possession, even though the master of the vessel intended when he left it, to return and attempt salvage.

Such intention, if it existed, does not appear to have been very firmly fixed, considering the leisurely manner in which the master proceeded after he reached the Port of Hongkong.

The evidence amply supports this finding. The chief officer, Weston, upon reaching the coast of Zambales, on May 12, 1913, sent the following telegram to the Director of the Bureau of Navigation:

SANTA CRUZ, Zambales, May 12, 1913.

Director of Bureau of Navigation, Manila.

Nippon stranded on Scarborough Reef, wants immediate assistance for saving crew boats gone—12.15 p. m.

(Sgd.) R. WESTON.

On the evening of the same day Weston sent the following telegram:

SANTA CRUZ, Zambales, May 12, 1913.

Director of Bureau of Navigation, Manila.

Left with nine hands at noon, 9th, 26 men still on board, ship well on reef, stern part afloat, about ten feet of water in holds, starboard list, heavy swell breaking over, little hope of saving ship—6.27 p. m.

(Sgd.) WESTON.

On May 13, 1913, Captain Dixon of the S. S. Manchuria, after rescuing the remainder of the crew left on board the Nippon, sent the following telegram to the Director of Navigation:

S. S. "MANCHURIA," May 13, 1913.

All rescued from the Nippon. Stranded on extreme north end of shoal. Vessel stranded May 9th. She is full of water fore and aft, and is badly ashore. Ship abandoned. Proceeding Hongkong—9.40 a. m.

(Sgd.) DIXON, *Master.*

On May 14, 1913, after the members of the crew who came ashore with Weston had reached Manila, they made the following signed statement:

MANILA, P. I., May 14, 1913.

We, the undersigned officers and part of the crew of the Swedish steamer Nippon, do hereby declare that the S. S. Nippon struck on Scarborough Reef, about 4.30 on the afternoon of Thursday, May 8, 1913. Two of her boats were lost after we struck the reef, leaving only two aboard and those damaged. The ship was filled with water and pounding on the reef and we considered her a wreck. In company with the chief officer, we left the ship about noon on Friday, May 9, 1913, in a small boat and reached Santa Cruz, Zambales, a distance of 130 miles on the morning of Monday, May 12, 1913, and immediately the chief officer wired to the Director of Navigation at Manila for assistance to rescue the balance of the crew left aboard the Nippon, as we considered their lives in danger and the ship a wreck, with little hope of saving her.

382

(Signed) F. CARMAN.
G. E. JOHANSSON.
W. BRATT.
B. NYOLRAM.
E. PETTERSON.
A. G. ERICKSSON.
F. PALM.
J. KARLBERG.
E. THULIN.

On May 16, 1913, Captain Anderson of the coast guard cutter Mindoro, made the following report to the Director of Navigation:

S. S. "MINDORO,"
MANILA, P. I., May 16, 1913.

SIR: I have the honor to make the following report of voyage made to Scarborough Reef, May 12 to 14, 1913, for officers and crew of S. S. Nippon:

May 13, 1913, being 2½ miles south of reef, I observed S. S. Nippon stranded on the N. E. edge of reef. I immediately steered northward around the western edge of reef and arrived off stranded ship at 9.30 a. m. S. S. Manchuria was laying to about 1½ miles northward of reef, making signals for me to come alongside. I immediately proceeded out to the Manchuria; upon arrival alongside the Manchuria the captain of the same ship informed me that the S. S. Nippon was abandoned and that he had the captain and crew on board for Hongkong. I then asked the captain of the Manchuria if the captain of the Nippon cared to go to Hongkong, as I was there to bring him and the crew to Manila if he desired to go. The captain of the Manchuria again informed me that the captain of the Nippon intended to go to Hongkong. I answered "All right, I will then go and have a look at the Nippon and see how badly she is wrecked." The captain of the Manchuria made the remark that she was half

full of water and that she was very badly wrecked, but that there was still some baggage left on board. He also informed me that he had a wire from the Director of Navigation ordering me to proceed to Santa Cruz to pick up boat's crew from Nippon. I said, "All right, I will go and get baggage and have a look at the wreck." I then left the Manchuria and steamed over to the wreck. On arrival alongside of the wreck I took on board all baggage packed standing on deck and sounded around the ship, fore and aft, finding 11 feet of water forward at low water and 20 feet aft in board, gradually decreasing from forward to aft and I found in holds about 8 feet of water and the cargo as far as I could see, on top, was nice and dry, and it is my opinion that with the position the ship is laying in and with the Southwest monsoon blowing the ship and most of the cargo can be salved, if work is started before the heavy typhoon season sets in. After leaving the wreck, I proceeded to Santa Cruz and picked up the first officer and crew of nine men and brought them to Manila.

On my second trip to the wreck, May 15th, I examined the Nippon more fully and I believe that if the cargo is taken out the ship can be saved after the holes are patched up, if this is done before the heavy weather sets in.

Very respectfully,

(Sgd.) GEO. ANDERSON,
Captain Mindoro.

The Director of Navigation, Manila.

Copy sent to Struckman & Company, May 16, 1913.

(Sgd.) A. S. THOMPSON, *Chief Clerk.*

The testimony of Captain Eggert of the Nippon regarding the circumstances of the wreck is as follows: (2d part of record, p. 327).

(P. 334.) Q. When the Manchuria visited the scene of the wreck on May 13, how many of you went on board?

A. We all went on board.

Q. By "all" you mean yourself, passenger, and all the members of the crew that remained?

A. Yes.

Q. What did you take with you?

A. Just personal luggage, not all, what you could carry in a small boat; it could not be very much considering that the boat was broken and there were 27 men, the ship's chronometer and ship's papers.

Q. What do you mean by "ship's papers"?

A. Register, articles.

Q. Did you take the ship's log?

A. Yes; that is the first thing I take.

Q. That is the first thing you take under what circumstances?

A. Under any circumstances of accidents to the ship; because it is the official record up to the time an accident happens.

Q. Do you mean to state, captain, that in the event of any accident to a ship, no matter how slight, that the ship's log and register and articles are taken ashore?

A. The ship's log on any occasion has to be brought before the Swedish Consul.

Q. How about the register and articles?

A. Of course not.

Q. Under what circumstances do you take ashore the ship's
383 articles and register?

A. When I leave the ship myself I have, of course, to take those papers with me.

Q. Every time you leave the ship?

A. No. Every time when I leave it stranded as she was. If I go on shore and try to get means for taking my ship off the ground, I have to prove what ship it is and all that. In the meantime a gale may come up and the ship be torn off the rock and destroyed and the papers lost.

(P. 336.) Q. What were the conditions prevailing aboard the ship from the time that she stranded until the Manchuria arrived?

A. The first night there was very bad sea and high wind. The ship was thrown up on the reef and bumping. Seas were washing right over all the time. Couldn't leave in the boats if we had tried to. The next morning was also bad, but a little better. It became so much better that we could send the boat off about 11 o'clock in the forenoon by using precautions, oil, etc. The third and fourth day the weather was fine.

(P. 337.) Q. And do you now admit that you were mighty glad to get off the Nippon?

A. We were all mighty glad.

Q. Why were you mighty glad?

A. Chiefly because the crew had insisted on leaving the ship in some way, by building rafts, or in that boat of ours. And secondly because of the uncertainty. We did not know if our boat had reached shore. The scene of the accident was quite out of the track of any vessel, so it was quite natural when we saw that ship coming up we were glad to get into communication with the outside world.

Q. You say that the crew had insisted on leaving the ship?

A. They were not insisting on it because they can not insist against the master of a ship. But they would like to get off.

Q. Why were they discussing the question?

A. Because they considered it better to leave the ship and reach land rather than stay on the ship, not knowing if the boat had reached land or not.

Q. They considered it better for what purpose?

A. Being safe.

Q. You mean better from the standpoint of safety of their life and limb?

A. Yes. To their lives.

(P. 343.) Q. Captain, if your purpose in leaving the Nippon was to go to Hongkong for the purpose of arranging for her salvage, why did you not leave some of the crew on board?

A. How could I leave some of the crew on board when there was no attendant? There could be a gale at any time and the ship would

have slipped off and broken to pieces. I first of all was responsible for their lives.

(P. 348.) Q. (By Mr. Rohde:) Captain, did you or did you not leave the Nippon, with the intention of returning and the hope of recovering your ship and cargo?

A. I left the Nippon with the full intention of returning to the ship and try to recover her, and I discussed that matter during the three days we were on the reef with every member I could see in the crew, and with the passenger. Everybody knew as soon as I put my foot on the Manchuria it was for the purpose of getting assistance. Captain Dixon knew, his officers knew it, and his crew knew it.

(Mr. Cohn:) You have not fully replied to the question asked you by counsel for the defendant, which is whether you had the hope of recovering the ship?

A. I had hope if the weather continued fine.

(Mr. Cohn:) If you had that hope why didn't you leave some of your crew on board?

A. Because the hope would not justify me leaving any of the crew on the ship.

(Mr. Cohn:) Your hope was so slight it did not warrant your leaving anybody on board?

A. A hope is always slight. I mean to say your hope will never justify you to risk another man's life, even if you have a very good foundation for your hope. Life comes before property.

(Mr. Cohn:) Just what do you mean by "hope"?

A. I mean to say that if the weather continues fine there is no risk, but if there is a typhoon or gale we will be worse off and the ship will be smashed and the crew perish. That is what I mean by a "hope" in this occasion.

(Mr. Cohn:) What you mean, Captain, is that you were going to Hongkong and if you could find some one that was willing to go out and look for your ship, and if your ship was still there, that you would undertake to salve her if you could?

A. Of course.

Chief Engineer Emil Gohde was asked why the crw wanted to get ashore.

(P. 353.) Q. Why did they want to get to shore?

A. They wanted to save their lives. We didn't know the weather in the China sea. We could have expected a typhoon in a couple of days and very likely the ship would have gone into the sea.

Captain Eggert sent the following cablegram to the owners of the Nippon after reaching Hongkong on May 14, 1913:

(P. 360.) Nippon wrecked during typhoon eight May Scarborough Shoal latitude 15 longitude 118 probably total wreck bottom seriously damaged ship full of water chief officer and nine men took to boat for rescue landed twelfth Luzon mailsteamer Manchuria saved captain and remaining crew morning thirteenth. Arrived Hongkong to-night. Wreck on edge of reef, will probably slip off

and sink by first gale captain arranging to visit wreck and attempt salvage.

EGGERT.

384 Captain Eggert did not make any determined effort to arrange for the salvage of the Nippon, as will be seen from the testimony.

(P. 330. Captain Eggert testifying.) Q. What did you do upon your arrival in Kongkong?

A. The first thing I did—it was about 5 o'clock in the afternoon—I went to the office of our agents—my owners' agents. It was then closed up so I had to proceed to the private residence of the manager. From there I dispatched a telegram to the owners.

* * * * * * *

Q. What date was this telegram sent?

A. On the evening of the 14th.

Q. Of what month?

A. Of May.

Q. Did you enter into any negotiations with persons or firms?

A. Yes. The first thing in the morning of the 15th I visited together with the Swedish Consul the Tykoo Dockyard people, the Hongkonk dockyard people, and went to the Mitsui Bussan Kaisha branch office, and those people sent a wire to their home office in Nagasaki.

Q. What, if anything, interrupted your negotiations with the firms and persons in Hongkong relative to the salvage of the Nippon and her cargo?

A. A wire from my owners.

* * * * * * *

Q. When was this telegram received by you, Captain?

A. On the 17th.

Q. What did you do then?

A. I tried to find out when the next steamer was leaving for Manila and there was none leaving before the 20th, the steamer I took and proceeded here.

From the above it will be seen that Capt. Eggert had over two days in which to arrange for salvage operations and he did nothing, while the plaintiffs, who were strangers and had no interest, sent out a salvage expedition in twenty-four hours after they discovered that the ship was wrecked.

The evidence proves that the Nippon was in peril; that the captain left in order to protect his life and the lives of the crew; that the animo revertendi was slight. The argument of the defendant-appellant to the effect that the ship was in no danger is a bit out of place in view of the statement of the captain that she would sink with the first gale, coupled with the fact that a typhoon was the cause of her stranding.

The Federal Courts have, a number of times, had presented to them cases in which the facts were very similar to the facts in the present case. The claim for salvage was allowed in each of these

cases. In The Bee (Fed. Cas., No. 1,219; 3 Fed. Cas., 41) the facts were as follows: The Bee sailed from Boston to Nova Scotia. Three days after leaving port a gale was encountered which forced her to run into a cove on the north side of Grand Manan Island, where an anchor was let out. The ship was somewhat injured from the force of the storm. The master and the crew stayed on board for 24 hours and then went ashore to procure assistance. The island was very sparsely settled. They met on shore a number of men (the libelants) to whom they explained the predicament and position of the ship. These men immediately went to the ship, boarded her, and took possession. After the master had been ashore about five hours he returned to the ship and found the libelants in possession. The owners contended that the master was excluded from the ship wrongfully and therefore the libelants could not claim salvage. The court stated the law as follows (p. 44):

When a vessel is found at sea, deserted, and has been abandoned by the master and crew, without the intention of returning and resuming the possession, she is, in the sense of the law, derelict, and the finder who takes the possession with the intention of saving her, gains a right of possession, which he can maintain against the true owner. The owner does not, indeed, renounce his right of property. This is not presumed to be his intention, nor does the finder acquire any such right. But the owner does abandon temporarily his right of possession, which is transferred to the finder, who becomes bound to preserve the property with good faith, and bring it to a place of safety for the owner's use; and he acquires a right to be paid for his services a reasonable and proper compensation, out of the property itself. He is not bound to part with the possession until this is paid, or it is taken into the custody of the law, preparatory to the amount of salvage being legally ascertained. Should the salvors meet with the owner after an abandonment,
385 and he should tender his assistance in saving and securing the property, surely this ought not, without good reasons, to be refused, as this would be no bar to the right of salvage, and should it be unreasonably rejected it might affect the judgment of a court materially, as to the amount proper to be allowed. Still, as we understand the law, the right of possession is in the salvor. But when the owner, or the master and crew who represent him, leave a vessel temporarily, without any intention of a final abandonment, but with the intent to return and resume the possession, she is not considered as a legal derelict, nor is the right of possession lost by such temporary absence *of* the purpose of obtaining assistance, although no individual may be remaining on board for the purpose of retaining the possession. Property is not, in the sense of the law, derelict and the possession left vacant for the finder, until the spes recuperandi is gone, and the animus revertendi is finally given up. (The Aquila, 1 C. Rob. Adm., 41.) But when a man finds property thus temporarily left to the mercy of the elements, whether from necessity or any other cause, though not finally abandoned and legally derelict, and he takes possession of it with the bona fide intention of saving it for the owner, he will not be treated as a tres-

passer. On the contrary, if by his exertions he contributes materially to the preservation of the property, he will entitle himself to a remuneration according to the merits of his service as a salvor.

The court allowed salvage in this case. They held that the master had taken insufficient precautions to protect his vessel and although the ship was not a legal derelict, the libelants were salvors and entitled to salvvage.

In The John Gilpin (Fed. Cas., No. 7,345; 13 Fed. Cas., 675) the ship John Gilpin, in attempting to leave New York harbor in a winter storm, was driven ashore. The ship's crew sent for help and in the meantime put forth every effort to get her off. Help arrived toward evening but accomplished nothing. The master and crew went ashore. The same night the libelants went out to the ship with equipment and started working. It was contended that the master had gone ashore for assistance. He returned the next morning with a tug and some men and demanded possession, which was refused. Salvage was allowed. The court said (p. 676):

The libelants, in the exercise of their calling as wreckers, coming to a vessel in that plight, would be guilty of a dereliction of duty if they failed to employ all their means for the instantaneous preservation of property so circumstanced. This may not be strictly and technically a case of derelict (Clarke vs. The Dodge Healey, Case No. 2,849), if really tht master of the brig had gone to the city to obtain the necessary help to save the cargo and brig, intending at the time, to return with all practicable dispatch. It appears he came to the wreck by 8 or 9 a. m. the following day, in a steam-tug, with men to assist in saving the cargo. The animus revertendi et recuperandi may thus far have continued with the master, but this mental hope or purpose must be regarded inoperative and unavailing as an actual occupancy of the vessel, or manifestation to others of a continuing possession. She was absolutely deserted for 12 or 14 hours, in a condition when her instant destruction was menaced, and the lives of those who should attempt to remain by her would be considered in highest jeopardy. She was quite derelict; and being thus found (The Boston, Case No. 1,673; Rowe vs. The Brig, Case No. 12,093; 1 Sir Lionel Jenkins, 89) by the libelants, the possession they took of her was lawful. (The Emulous, Case No. 4,480.)

Possession being thus taken when the vessel was, in fact, abandoned and quite derelict, under peril of instant destruction, the libelants had a right to retain it until the salvage was completed, and no other person could interfere against them forcibly, provided they were able to effect the purpose and were conducting the business with fidelity and vigor.

In The Shawmut (155 Fed. Rep., 476) the court allowed salvage upon the following facts: The four-masted schooner Myrtle Tunnel sailed from Brunswick bound for New York. The first day out a hurricane struck her and tore the sails away and carried off the deck load. She was badly damaged and leaking. The master of the Myrtle Tunnel requested towage by the steamship Mae to the port of Charleston. The Mae, on account of her own damaged condition, was unable to tow but she took the master and crew of the

Myrtle Tunnel off landed them at Charleston. The owners were notified and the ystarted an expedition out in search. Before this expedition reached her, the steamship Shawmut sighted the Myrtle Tunnel, and, finding that she was abandoned and waterlogged, took her in tow and succeeded in taking her to Charleston. The owners of the Myrtle Tunnel contended that she was not derelict,
386 because the master had gone ashore to procure assistance. With reference to this question the court said (p. 478):

The first question that arises is whether the Myrtle Tunnel is a derelict. Prima facie a vessel found at sea in a situation of peril, with no one aboard of her, is a derelict; but where the master and crew leave such vessel temporarily, without any intention of final abandonment, for the purpose of obtaining assistance, and with the intent to return and resume possession, she is not technically a derelict. It is not of substantial importance to decide that question. She was what may be called a quasi derelict; abandoned, helpless, her sails gone, entirely without power in herself to save herself from a situation not of imminent, but of considerable peril; lying about midway between the Gulf Stream and the shore, and about 30 miles from either. An east wind would have driven her upon one, and a west wind into the other, where she would have become a total loss. Lying in the pathway of commerce, with nothing aboard to indicate an intention to return and resume possession, it was a highly meritorius act upon the part of the Shawmut to take possession of her, and the award must be governed by the rules which govern in case of derelicts; the amount of it to be modified in some degree in interest of the owners in consideration of their prompt, intelligent, and praiseworthy efforts to resume possession of her, wherein they incurred considerable expense.

The first of these cases was decided in 1836 and the last in 1907. They indicate that the abandonment of a vessel by all on board, when the vessel is in peril, will justify third parties taking possession with the bona fide intention of saving the vessel and its cargo for its owners. The mental hope of the master and crew will in no way affect the possession nor the right to salvage. See also The Hyderabad (11 Fed., 749), The Cairnsmore (20 Fed., 519), The Ann L. Lockwood (37 Fed., 233).

This brings us to the second question raised by the assignments of error; (2) Was the salvage conducted with skill, diligence, and efficiency? The court found:

While the plaintiff entered upon the salvage proceedings without proper means and not being adapted by their business to conduct their work, and while it may appear that possibly the salvage might have been conducted in a better manner and have accomplished somewhat better results in the saving of the copra cargo, yet it appears that they quickly remedied their lack of means and corrected the conduct of the work so that it accomplished fairly good results.

It does not appear from the evidence that anyone then or subsequently suggested or found any other course which might have been pursued and which would have brought better results.

There was some dispute whether Manila or Hongkong should be

used as a base of operations. Capt. Robinson, who was the only one of the experts who had had any experience in handling wet copra, unqualifiedly approved Manila as a base for operations. (P. 437, 3d part of record).

Q, Assuming that you had been asked to undertake the work of salving the steamer Nippon and her cargo, please state whether you would have undertaken that work with the men and material available in Manila, or whether you would have gone to Hongkong and used Hongkong men and material and made Hongkong your base of operations?

A. Certainly not. I would have made Manila my base, which I always have done.

Lebreton, a stevedore, testified that he would have gotten some of his materials from Hongkong but that he would have freighted the salved cargo to Manila. All other things being equal, the fact that Hongkong is forty sailing hours from Scarborough Reef, while Manila is less than twenty-four sailing hours would make Manila by far the more logical base.

The plaintiffs sent men into the hold of the ship and sacked the copra and brought it to Manila where it was sold. Some of the witnesses contended that other methods should have been used. They testified that "grabs" or "clam shells" would have brought better results, but none of these witnesses had had any experience in unloading wet copra. Capt. Robinson was the only witness called who had had any experience in the class of work. He testified that
387 the only way all the copra could be gotten out was by sacks or by canvass slings; that "grabs" would be of no use because of the inability to work with them between decks. The copra was in three layers. The top layer was dry, the middle layer was submerged every time the tide rose, and the lower layer was submerged all of the time. It was manifestly impossible to keep these layers separate by using "grabs" or "clam shells." The fact that wet copra is exceedingly difficult to handle, on account of the gases which arise from it, is also of prime importance in weighing the testimony of defendant's witnesses, because none of them had ever had experience with wet copra.

The plaintiffs commenced the actual work of salving the ship and cargo on May 18, 1913. The last of the cargo was brought to Manila the latter part of June. The last of the dry copra was brought into Manila on June 5. The estimates of the experts with regard to the time necessary to remove the cargo ranged from eight to twenty days. The greater portion of the cargo was brought in by the plaintiffs within fifteen days. The delay after June 5 was due to the difficulty in inducing laborers to work with wet copra. This difficulty would have arisen with any set of salvors and cannot be attributed to a lack of care or diligence upon the part of the plaintiffs.

The plaintiffs were diligent in commencing the work and were careful and efficient in its pursuits and conclusion.

The third and last question is with regard to the amount of the award—(3) Was the award justified?

Compensation as salvage is not viewed by the admiralty courts

merely as pay on the principle of quantum meruit or as remuneration pro opere et labore, but as a reward given for perilous services voluntarily rendered, and as an inducement to mariners to embark in such dangerous enterprises to save life and property. (The Sabine, 101 U. S., 384).

The plaintiff-appellant contends that the expenses incurred should be deducted from the entire amount of the salved property and the remainder be divided as a reward for the services rendered. This contention has no basis in the law of salvage compensation. The expenses incurred by the plaintiffs must be borne by them. It is true that the award should be liberal enough to cover the expenses and give an extra amount as a reward for the services rendered but the expenses are used in no other way as a basis for the final award. A part of the risk that the plaintiffs incurred was that the goods salved would not pay them for the amount expended in salving them. The plaintiffs knew this risk and they should not have spent more money than their reasonable share of the proceeds would amount to under any circumstances.

In the case of The Carl Schurz (Case No. 2,414; 5 Fed. Cas., 84) the actual expenditure by the libelants in salving the vessel in question was $568.95. The ship when sold brought $792. The libelant wanted the court to first deduct the expenses. The court refused to do this but decreed a moiety. The court said (p. 86).

A salvor, in the view of the maritime law, has an interest in the property; is is called a lien, but it never goes, in the absence of a contract expressly made, upon the idea of a debt due by the owner to the salvor for services rendered, as at common law, but upon the principle that the service creates a property in the thing saved. He is, to all intents and purposes, a joint owner, and if the property is lost he must bear his share like other joint owners.

This is the governing principle here. The libelants and the owners must mutually bear their respective share of the loss in value by the sale. If the libelant has been unfortunate and has spent his time and money in saving a property not worth the expenditure he made, or if, having saved enough to compensate him, it is lost by the uncertainties of a judicial sale for partition, so to speak, it is a misfortune not uncommon to all who seek gain by adventurous speculations in values. The libelant says in his testimony that he relied entirely on his rights as a salvor. This being so he knew the risk he ran and it was his own folly to expend more money in the service than his reasonable share would have been worth under all cir-
388 cumstances and contingencies. He can rely neither on the common law idea of an implied contract to pay for work on and about one's property what the work is reasonably worth with a lien attached by possession for satisfaction, nor upon any notion of an implied maritime contract for the service, with a maritime lien to secure it, as in the case of repairs, or supplies furnished a needy vessel or the like. In such a case the owner would lose all if the property did not satisfy the debt, when fairly sold. But this doctrine has no place in the maritime law of salvage. It does not proceed upon any theory of an implied obligation, either of the owner or the res, to pay a quan-

tum meruit, nor the actual expenses incurred, but rather on that of a reasonable compensation or reward, as the case may be, to one who has rescued the res from danger of total loss. If he gets the whole, the property had as well been lost entirely, so far as the owner is concerned. (Smith vs. The Joseph Stewart, Fed. Cas., No. 13,070.), I think the public policy of encouragement for such service does not, of itself, furnish sufficient support for a rule which would exclude the owner from all benefit to be derived from the service.

In Williams vs. The Adolphe (Fed. Cas. No. 17,712; 29 Fed. Cas., 1350) the court said (p. 1353):

The claim of the libelant is for salvage, the services rendered were salvage services and the owners are to receive their property again, after paying salvage for the services rendered them. What service would it be to them to take their property under circumstances calling for the whole of it by way of indemnity? The mistake of the captain and supercargo, and part owner of the Triton as to the value of the property on board the Adolpe, should not operate to the injury of the owners thereof; the salvors must bear the consequences of their own mistake, taking such proportion of the property salved, as by the law of the admiralty should be awarded them.

In The Edwards (12 Fed. Rep., 508, 509), the court said:

It is true that in rendering a salvage service the salvor assumes the risk of failure, and his salvage depends upon his success and the amount of property saved; yet when there is enough to fully compensate him for time and labor, and leave a reasonable proportion for the owner, he should certainly be awarded that, if the amount will allow no more.

In The L. W. Perry (71 Fed. Rep., 745, 746) the court said:

Without regard to the element of reward which is intended by the salvage allowance, it is manifest that remuneration pro opere et labore would be placed in excess of the fund here, if such basis were allowable. Therefore, it is contended on behalf of the libelant that the entire sum remaining should be awarded for the salvage service; * * *.

While salvage is of the nature of a reward for meritorious service, and for determination of its amount the interests of the public and the encouragement of others to undertake like service are taken into consideration, as well as the risk incurred, and the value of the property saved, and where the proceeds for division are small, the proportion of allowance to the salvor may be enlarged to answer these purposes, nevertheless, that doctrine of salvage requires, as a prerequisite to any allowance, that the service "must be productive of some benefit to the owners of the property salved; for, however meritorious the exertions of alleged salvors may be if they are not attended with benefit to the owners, they can not be compensated as such." (Abb. Shipp. [London Ed., 1892], 722.) The claim of the libelant can only be supported as one for salvage. It does not constitute a personal demand, upon quantum meruit, against the owners, but gives an interest in the property saved, which entitled the salvors to a liberal share of the proceeds. * * *

(P. 747.) One of the grounds for liberality in salvage awards is

the risk assumed by the salvor,—that he can have no recompense for service or expense unless he is successful in the rescue of property, and that his reward must be within the measure of his success. He obtains an interest in the property and in its proceeds when sold, but accompanied by the same risk of any misfortune or depreciation which may occur to reduce its value. In other words, he can only have a portion, in any event; and the fact that his exertions were meritorious and that their actual value, or the expense actually incurred, exceeded the amount produced by the service, cannot operate to absorb the entire proceeds against the established rules of salvage. (The Carl Schurz, Fed. Cas., No. 2414.)

The plaintiff-appellant contend that the award of the lower court of one-half is the established rule in cases of derelicts and should not be disturbed. It is well established now that the courts have a wide discretion in settling the award. The award is now determined by the particular facts and the degree of merit. In The Job H. Jackson (161 Fed. Rep., 1015, 1018), the court said:

There is no fixed rule for salvage allowance. The old rule in cases of a derelict was 50 per cent of the property salved; but under modern decisions and practice, it may be less, or it may be more. The allowance rests in the sound discretion of the court or judge, who hears the case, hears the witnesses testify, looks into their eyes, and is
389 acquainted with the environments of the rescue. * * *

An allowance for salvage should not be weighed in golden scales, but should be made as a reward for meritorious voluntary services, rendered at a time when danger of loss is imminent, as a reward for such services so rendered, and for the purpose of encouraging others in like services.

In The Lamington (86 Fed. Rep., 675, 678) the court said:

While it appears most clearly that, since the old hard and fast rule of "50 per cent of a derelict" was abandoned, the award is determined by a consideration of the peculiar facts of each case, it is none the less true that the admiralty courts have always been careful not only to encourage salving enterprises by liberality, when possible, but also to recognize the fact that it is, after all, a speculation in which desert and reward will not always balance.

The award is largely in the discretion of the trial court and it is rare that the appellate court will disturb the finding.

Appellate courts rarely reduce salvage awards, unless there has been some violation of just principles, or some clear or palpable mistake. They are reluctant to disturb such award, solely on the ground that the subordinate court gave too large a sum, unless they are clearly satisfied that the court below made an exorbitant estimate of the services. It is equally true that, when the law gives a party a right to appeal, he has the right to demand the conscientious judgment of the appellate court on every question arising in the case, and the allowance of salvage originally decreed has, in many cases, been increased or diminished in the appellate court, even where it did not violate any of the just principles which should regulate the subject, but was unreasonably excessive or inadequate. (Post vs. Jones, 19 How., 161). Although the amount to be awarded as salvage rests, as

it is said, in the discretion of the court awarding it, appellate courts will look to see if that discretion has been exercised by the court of first instance in the spirit of those decisions which higher tribunals have recognized and enforced, and will readjust the amount if the decree below does not follow in the path of authority, even though no principle has been violated or mistake made.

The property of the defendants-appellant which was salved was forced to pay the same proportion of the award without distinction. The dry copra and the agar-agar was salved with much more ease than the wet copra. The courts have, almost universally, made a distinction in this regard. In The America (1 Fed. Cas., 596), decided in 1836, the award was as follows: 25 per cent on cargo salved dry; 50 per cent on cargo salved damaged; 60 per cent on cargo salved by diving.

In The Ajax (1 Fed. Cas.. 252), decided in 1836, the award was as follows: 33 per cent on the dry; 50 per cent on the wet; 50 per cent on ship's materials.

In The Nathaniel Kimball (Fed. Cas., No. 10,033), decided in 1853, the award was as follows: 30 per cent on dry cargo; 50 per cent on wet, salved by diving and working under water.

In The Brewster (Fed. Cas., No. 1852), decided in 1848, the award was as follows: 33 per cent, and as to some cargo where diving was necessary, 60 per cent.

In The Mulhause (Fed. Cas., No. 9910). decided in 1859. the award was as follows: 25 per cent salving dry deck cotton; 45 per cent salving cotton submerged between decks; 55 per cent salving cotton by diving.

In The John Wesley (Fed. Cas., No. 7433), decided in 1866, the award was as follows: 15 per cent on damaged cotton a slightly higher per cent.

In The Northwester (Fed. Cas., No. 10333), decided in 1873, the award was as follows: 20 per cent on cotton dry; 33⅓ per cent cotton wet and burnt; 40 per cent on materials; 50 per cent on property salved by diving.

In Baker vs. Cargo, etc. of The Slobodna (35 Fed. Rep.. 537), decided in 1887, the award was as follows: 25 per cent on dry cotton; 33⅓ per cent on wet cotton; 45 per cent on materials.

In the cases in which the full award of 50 per cent was allowed the court usually made the comment: "services highly meritorious," "meritorious service," "with great labor and difficulty," or similar remarks.

390 In the salvage operations conducted by the plaintiff, the following property was involved:

First, the steamship Nippon, valued at	P250,000.00
Second, copra, net value. salved	142,657.05
Third, agar agar, net value, salved	5,635.00
Fourth, general cargo	5,939.68
Fifth, camphor, net value, salved	1,850.00
Sixth, curios, net value, salved	150.00

The plaintiff and the owners of the ship have heretofore, by mutual agreement, settled the question of the amount of salvage of the ship. The plaintiff received for that part of their services the sum of £15,000, or about P145,800.

No appeal was taken from the judgment of the lower court concerning the amount of salvage allowed by it for the general cargo, the camphor, nor the curios salved.

The only question raised by the appellants is as to the amount of salvage which should be awarded to the plaintiff-appellant for the copra and the agar agar. After a careful study of the entire record and taking into account the amount which the plaintiff has heretofore received, we have arrived at the conclusion that in equity and justice the plaintiff-appellant should receive for their services the following amounts:

(*a*) 40 per cent of the net value of the wet copra salved.

(*b*) 25 per cent of the net value of the dry copra salved.

(*c*) 20 per cent of the net value of the agar agar salved.

The net value of the wet copra salved amounted to P40,381.94; 40 per cent of that amount would be P16,152.78.

The net value of the dry copra salved amounted to P102,275.11; 25 per cent of that amount would be P25,568.77.

In ascertaining the net value of the copra salved, the expenses incurred by the Collector of Customs in the sale of the copra, amounting to P4,080.01, has been reduced from the total amount of the copra salved in the proportion of 2.5 to 1. Dividing the expense in that proportion we have deducted from the amount of the dry copra salved the sum of P2,914.39, and from the amount of the wet copra salved, the sum of P1,165.62.

The net value of the agar-agar salved amounted to P5,636; 20 per cent of that amount would be P1,127.

In view of all the foregoing, it is hereby ordered and decreed that the judgment of the lower court be modified, and that a judgment be entered against the defendant-appellants and in favor of the plaintiff-appellant, as follows: First, it is hereby ordered and decreed that a judgment be entered against the defendant, the Oelwerke Teutonia, and in favor of the plaintiff in the sum of P41,721.55. Second, it is further ordered and decreed that a judgment be entered against the defendant, The New Zealand Insurance Company (Ltd.), and in favor of the plaintiff, in the sum of P1,127. Third, it is further ordered and decreed that the amount of the judgment hereinbefore rendered in favor of the plaintiff be paid out of the money which is now under the control of the Court of First Instance of the city of Manila. And without any finding as to costs, it is so ordered.

Arellano, C. J., Torres, Johnson, Carson, and Trent, JJ.

Judgment modified.

391 That thereafter on the 10th day of March, 1916, plaintiff by its attorneys, filed in writing their exception to the foregoing decision of the Supreme Court of the Philippine Islands.

That thereafter, on the 11th day of March, the defendant, Oelwerke Teutonia, by its attorney, filed in writing its exception to the

decision of the Supreme Court of the Philippine Islands above set forth.

That thereafter, to-wit, on the 29th day of March, 1916, plaintiff by its attorneys filed in writing with the Supreme Court of the Philippine Islands a petition for a rehearing and for a modification of the decision of the said Supreme Court, upon the following grounds:

1st. That the Court erred in ruling that the plaintiff was not entitled to reimbursement of its expenses out of the gross value of the salved property before the division of the remainder between the salvors and claimants.

2nd. That the Court erred in reducing the reward for the salvage of the dry copra to twenty-five per cent, and of the wet copra to forty per cent of the gross sale value thereof.

That on the same date, to-wit, the 29th day of March, 1916, plaintiff petitioned the Supreme Court of the Philippine Islands for permission to make an oral argument in support of its petition for rehearing in the said cause.

That thereafter, to-wit, on the 30th day of March, 1916, the Supreme Court of the Philippine Islands granted the petition of plaintiff for permission to make an oral argument in support
392 of its motion for rehearing, and designated the 11th day of July, 1916, as the time for the hearing of such arguments.

That thereafter, to-wit, on the 11th day of July, 1916, counsel for plaintiff and for the defendant Oelwerke Teutonia appeared before the Supreme Court of the Philippine Islands, and arguments were heard upon plaintiff's motion for a rehearing; that the quorum of the said Supreme Court at the hearing of said motion was composed of five of the seven justices of the said court, to-wit: Justices Torres, Johnson, Trent, Moreland and Araullo, Chief Justice Arellano and Justice Carson being absent on vacation; that thereafter, to-wit: on the 27th day of July, 1916, by resolution concurred in by all the justices who were present at the hearing of plaintiff's said motion the following order was spread upon the minutes of the session of the court held on that date, to-wit:

(Title of Court and Cause.)

"Upon a consideration of the motion for a rehearing and the "argument of counsel for the respective parties in support thereof, "and considering the efficient and prompt method by which the "plaintiffs performed the salvage service in question, and the hard-"ship and risk which they undertook, and the great expense in-"curred, and in the interest of equity and justice, we are of the "opinion that the judgment heretofore announced should be modi-"fied and the appellants should receive as salvage for the dry copra "saved, 40% of the value thereof, instead of 25%, as indicated in the "decision heretofore announced. The value of the dry copra saved "amounted to P102,275.11. 40% of that amount is P40,910.04.

"Therefore let the judgment heretofore announced be modified in "accordance herewith to the extent that judgment be rendered

" against the defendant 'Oelwerke Teutonia' and in favor of plain-
" tiff for the sum of P57,062.82 in place of P41,721.55."

393 That at the next session of the Court the minutes of the session of the 28th day of July, 1916, were read and approved by the justices present at the hearing of the plaintiff's said motion, but the minute order last above transcribed was not signed by the said justices or either of them.

That thereafter, to-wit, on the 28th day of July, 1916, the Clerk of the Supreme Court of the Philippine Islands entered judgment upon the decision of the 9th day of March, 1916, as modified by the minute order last above transcribed, which judgment is in words and figures as follows:

" I.

" It is hereby ordered and decreed that judgment be entered " against defendant, Oelwerke Teutonia, and in favor of plaintiff, " for the sum of P57,062.82.

" II.

" It is further ordered and decreed that judgment be entered " against the defendant, New Zealand Insurance Co. Ltd., and in " favor of plaintiff for the sum of P1,127.00.

" III.

" It is further ordered and decreed that the judgment hereby ren-
" dered against defendants be paid out of the funds now in the con-
" trol of the Court of First Instance of the City of Manila.
" No costs will be allowed."

That thereafter, on the 3rd day of August, 1916, for defendant, Oelwerke Teutonia, served upon counsel for plaintiff herein notice of a motion, in words and figures as follows:

(Title of Court and Cause.)

Now comes the Teutonia Oelwerke and moves the Supreme Court to set aside the judgment entered in this cause by the Clerk of the Court upon the following grounds:

394 1. The decision rendered in this cause before the last vacation of the Court, was taken part in and signed by the following Justices: Arellano, Torres, Carson, Johnson and Trent.

The unsigned order or resolution modifying the decision and in effect ordering a judgment for a far greater amount was made at a session of the Court where there were present the following Justices: Torres, Johnson, Trent, Moreland and Araullo.

It therefore appears that the order or resolution vastly increasing

the judgment was taken part in by only three Justices that participated in and signed the decision in the cause.

(Sgd.) ROHDE & WRIGHT, *Attorneys.*

That by resolution adopted the 5th day of August, 1916, the Supreme Court of the Philippine Islands denied the motion of the defendant, Oelwerke Teutonia, to set aside the judgment entered herein, and ordered a stay of the remittitur for the term of ten days to enable said defendant to prepare an appeal to the Supreme Court of the United States.

That thereafter, on the 4th day of August, 1916, the defendant, Oelwerke Teutonia, by its attorneys, presented to the Hon. E. Finley Johnson, one of the Judges of the Supreme Court of the Philippine Islands, a petition for an appeal, in words and figures as follows:

(Title of Court and Cause.)

"The defendant, Oelwerke Teutonia, conceiving itself aggrieved "by the judgment made and entered on the 28th day of July, nine-"teeen hundred and sixteen, in the above entitled cause, does hereby "appeal from the said judgment and decree to the Supreme Court of "the United States for the reasons specified in the assignment of
"errors which is filed herewith, and prays that this appeal
395 "may be allowed and that a transcript of the record, proceed-
"ings, and papers upon which said judgment and decree was "made, duly authenticated, may be sent to the Supreme Court of "the United States. Manila, P. I., August 4th, 1916. (Sgd.) "Rohde & Wright, Attorneys for Appellees Oelwerke Teutonia, 103 "Juan Luna, Manila, P. I."

That on the same date the defendant, Oelwerke Teutonia, by its attorney, filed with the Supreme Court of the Philippine Islands an assignment of errors in words and figures as follows:

(Title of Court and Cause.)

"The defendant Oelwerke Teutonia prays an appeal from the "final decree of this Court to the Supreme Court of the United "States, and assigns for errors:

"I. The Court erred in holding that the plaintiffs are salvors of "the copra cargo in question.

"II. The Court erred in holding that the plaintiffs undertook or "underwent hardship or risk.

"III. The Court erred in allowing the plaintiffs 40% of the value "of the dry copra saved.

"IV. The Court erred in ordering judgment in favor of the plain-"tiffs for the sum of P57,062.82.

"V. The Court erred in dismissing the counterclaim of this de-"fendant.

"VI. The Court erred in not rendering its final decision in writing "signed by the Justices of the Court. Manila, P. I., August 4th, "1916. (Sgd.) Rohde & Wright, Attorneys for Oelwerke Teutonia, "103 Juan Luna, Manila."

396 That thereafter, to-wit, on the 10th day of August, 1916, the Hon. E. Finley Johnson, one of the Justices of the Supreme Court of the Philippine Islands, made an order in writing allowing the appeal of the defendant, Oelwerke Teutonia, and issued a citation to plaintiffs to appear at the Supreme Court of the United States at Washington, which citation is in words and figures as follows:

(Title of Court and Cause.)

"The President of the United States to Erlanger & Galinger, "Greeting: You are hereby cited and admonished to be and appear "at the Supreme Court of the United States at the City of Washing- "ton, within one hundred and twenty days from the date of this "writ, pursuant to an appeal duly allowed by the Supreme Court of "the Philippine Islands and filed in the Clerk's Office of the said "Court on the 5th day of August, 1916, in a cause wherein Oelwerke "Teutonia is appellant and you are appellee, to show cause, if any, "why the decree rendered against the said appellant as in the said "appeal mentioned should not be corrected and why speedy justice "should not be done to the parties in that behalf.

"Witness the Honorable Edward Douglass White, Chief Justice "of the United States, this 10th day of August, 1916. (Sgd.) E. "Finley Johnson, Associate Justice of the Supreme Court of the "Philippine Islands. Service acknowledged this 10th day of August, "1916. (Sgd.) Gilbert, Cohn & Fisher, Attorneys for Erlanger & "Galinger."

397 That thereafter, on the 29th day of August, 1916, the plaintiffs by their attorneys, presented to the Honorable E. Finley Johnson, one of the Judges of the Supreme Court of the Philippine Islands, a petition for an appeal in words and figures as follows:

(Title of Court and Cause.)

"The above named plaintiffs conceiving themselves aggrieved "by the decree made and entered on the 27th day of July, 1916, in "the above entitled cause, do hereby appeal from said order and de- "cree to the Supreme Court of the United States for the reasons speci- "fied in the Assignment of Errors which is filed herewith, and pray "that this appeal may be allowed and that a transcript of the record, "proceedings and papers upon which said order was made, duly "authenticated, may be sent to the Supreme Court of the United "States. Dated: August 29, 1916. Gilbert, Cohn & Fisher. (Sgd.) "pp. Charles C. Cohn, Attorneys for plaintiffs."

That simultaneously with the presentation of its claim of appeal, plaintiff presented an assignment of errors in words and figures as follows:

(Title of Court and Cause.)

"The above named plaintiffs say that in the record of this case "and in the final decree entered therein there is manifest error in "the following among other particulars:

"First. That the amount allowed to your appellant, to-wit, the
"sum of P57062.82, equivalent to $28531.41, is grossly in-
398 "adequate in law and under the facts of the case for the
"service rendered.

"Second. That the award of P57062.82, or $28531.41, is contrary "to the law and the evidence in the case and is a wholly inadequate "award.

"Wherefore, said appellants pray that for the aforesaid errors "found in the record of said cause and said decree the same may be "reversed and such judgment entered thereon as ought to have been "rendered by the Supreme Court of the Philippine Islands. Dated: "August 29, 1916. Gilbert, Cohn & Fisher. (Sgd.) Charles C. "Cohn, Attorneys for appellants."

That plaintiffs' petition and assignments of error were accompanied by an affidavit in words and figures as follows:

(Title of Court and Cause.)

"United States of America, Philippine Islands, City of Manila, "*s.s.:* Charles C. Cohn being first duly sworn on his oath says: "That he is one of the attorneys for the appellants in the above en- "titled cause and is personally acquainted with the subject matter "of said cause; that the said cause was commenced in the Court of "First Instance of the City of Manila and prosecuted in said court "by said appellants for the express purpose of recovering from the "respondent, Oelwerke Teutonia, a reasonable and adequate com- "pensation and reward for the moneys expended, risks incurred and "the labor and services performed by said appellants in the salvage "of that portion of the general cargo of the S. S. 'Nippon' which has "been and is claimed by the said respondent, Oelwerke Teutonia;
"that the amount of the said expenditures of appellants in
399 "the performance of said salvage service for which the said
"cargo of respondent is responsible is not less than P98720.00 "or $49360.00; that the sum total of reward for the risks assumed "and the labor and services performed by appellants is not less than "a moiety of the net value of the salved cargo, or the sum of P28,- "755.86, or $14,377.93; that the sum total of award claimed by "appellants has been and is the sum of P127,475.08, or $63,737.54; "that the sum total of award in the decree appealed from as against "the respondent herein was and is the sum of P57,062.82, or $28,- "531.41; that he difference between the award sought and claimed

"by appellants and the award made herein by the Supreme Court "of the Philippine Islands is the sum of $35,206.13; that the said "difference of $35,206.13 is the amount in controversy between the "parties to this appeal and by virtue of the inherent nature of sal- "vage awards wherein the amount is within the discretion of the "Court and is limited only by the value of the salved property, the "amount so in controversy exceeds the sum of $25,000.00, United "States Currency, exclusive of interest and costs. (Sgd.) Charles "C. Cohn. Subscribed and sworn to before me at Manila, P. I., "this 29th day of August, 1916. Affiant exhibited Cedula No. H- "72057, issued at Manila, P. I., the 18th day of May, 1916. (Sgd.) "Ricardo Paràs, Notary Public. My Commission expires December "31, 1916."

That plaintiffs' said petition for an appeal was allowed by order in writing entered herein by the Hon. E. Finley Johnson, one of the Judges of the Supreme Court of the Philippine Islands, and
400 upon his order a citation was issued to defendant Oelwerke Teutonia, in words and figures as follows:

"United States of America, Philippine Islands. In the Supreme "Court of the Philippine Islands. S. Erlanger et al., Plaintiffs, vs. "Oelwerke Teutonia, Defendant. The United States of America, "*ss:* The President of the United States to Oelwerke Teu- "tonia, Greeting: You are hereby cited and admonished to "be and appear at the Supreme Court of the United States at the "City of Washington, within one hundred and twenty days from "the date of this writ, pursuant to an appeal duly allowed by the "Supreme Court of the Philippine Islands and filed in the clerk's "office of the said court on the 29th day of August, 1916, in a cause "wherein S. Erlanger and I. Erlanger are appellants and you are "appellee, to show cause, if any, why the decree rendered in favor "of said appellants and against you as in the said appeal maintained "should not be corrected, and why speedy justice should not be done "to the parties in that behalf. Witness the Honorable Edward "Douglass White, Chief Justice of the Supreme Court of the United "States, this 9th day of September, A. D. 1916. (Sgd.) E. Finley "Johnson, Associate Justice of the Supreme Court of the Philippine "Islands."

That thereafter, to-wit, on the 14th day of October, 1916, the following acknowledgment of service was filed herein:

(Title of Court and Cause.)

"Service by copy of the appeal and allowance, specification of "errors on appeal, and citation to appear in the Supreme Court of "the United States, is hereby admitted this 14th day of October, "1916. (Sgd.) Rohde & Wright, Attorneys for Appellee, Oelwerke "Teutonia."

401 That thereafter plaintiff filed its bond for costs, which was duly approved.

That thereafter defendant, Oelwerke Teutonia, filed its bond for costs and supersedeas, which was duly approved.

That thereafter, to-wit, on the 6th day of December, 1916, the plaintiff and the defendant, by their respective attorneys, prayed for an extension of the time allowed for the preparation of the record and its transmission to the Supreme Court of the United States, which said petition was granted by orders dated December 8, 1916, of the following tenor, to-wit:

(Title of Court and Cause.)

"Upon reading the petition of the attorneys for the defendant, "Oelwerke Teutonia, it is hereby granted an additional term of "ninety days for the transmission of the record of the above-entitled "case to the Supreme Court of the United States.

"Manila, P. I., December 8, 1916. (Sgd.) E. Finley Johnson, "Associate Justice of the Supreme Court of the Philippine Islands."

(Title of Court and Cause.)

"Order. Upon reading the petition of the attorneys for the "plaintiffs, Erlanger & Galinger, it is hereby granted an additional "term of ninety days for the transmission of the record of the above-"entitled case to the Supreme Court of the United States. Manila, "P. I., December 8, 1916. (Sgd.) E. Finley Johnson, Associate "Justice of the Supreme Court of the Philippine Islands."

402 SUPREME COURT OF THE PHILIPPINE ISLANDS,
Manila, Philippine Islands, ss:

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing 401 pages contain true, full and complete copies of all the pleading, orders, evidence and decisions, including the opinion and order for judgment of this Supreme Court, in a certain cause wherein Erlanger & Galinger, a partnership, was plaintiff, and Oelwerke Teutonia and others were defendants, saving and excepting those parts thereof which for the sake of clearness and brevity were omitted herefrom by agreement of counsel.

I do further certify that the original citation with acknowledgment of service are hereunto attached and herewith returned.

In testimony whereof I hereto subscribe my name and affix the seal of the Supreme Court of the Philippine Islands at Manila, P. I., this 11th day of January A. D., one thousand nine hundred and sixteen.

[Seal Corte Suprema, Islas Filpinas.]

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

Now come the parties to the above-entitled cause by their respective attorneys, and stipulate and agree that the foregoing transcript of the record of this cause is correct, and that it is complete, saving such omissions as have been made by their consent.

403 Manila, P. I., January 11th, 1917.

ROHDE & WRIGHT,

By WM. J. ROHDE,
Attorneys for Oelwerke Teutonia.

GILBERT, COHN & FISHER,

pp. F. C. FISHER,
Attorneys for Erlanger & Galinger.

404 THE UNITED STATES OF AMERICA:
Supreme Court of the Philippine Islands.

ERLANGER & GALINGER, Plaintiffs and Appellants,

versus

THE SWEDISH EAST ASIATIC CO., LTD., et al., Defendants.

THE "OELWERKE TEUTONIA" and NEW ZEALAND INSURANCE CO., LTD., Defendants and Appellants.

Judgment.

July 28, 1916. R. G. No. 10051.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the ninth day of March, A. D. one thousand nine hundred sixteen.

By virtue thereof, it is hereby ordered and decreed that the judgment of the Court of First Instance of Manila, dated the thirteenth day of May, one thousand nine hundred fourteen, and from which the above-entitled appeals were taken, be modified, and that a judgment be entered against the defendants-appellants and in favor of the plaintiffs-appellants, as follows:

1st. It is hereby ordered and decreed that a judgment be entered against the defendant The "Oelwerke Teutonia" and in favor
405 of the plaintiffs in the sum of P57,062.82;

2nd. It is further ordered and decreed that a judgment be entered against the defendant The New Zealand Insurance Company, Limited, and in favor of the plaintiff, in the sum of P1,127.00;

3rd. It is further ordered and decreed that the amount of the judgment hereinbefore rendered in favor of the plaintiff be paid out of the money which is now under the control of the Court of

First Instance of the City of Manila. And without any finding as to costs.

(Sgd.) V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

[Seal Corte Suprema, Islas Filpinas.]

Certified Correct:

V. ALLEN,
Clerk of the Supreme Court
of the Philippine Islands.
ar.

406 Supreme Court, Philippine Islands, Clerk's Office, Aug. 30, 1916.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

S. ERLANGER et al., Plaintiffs,

vs.

OELWERKE TEUTONIA, Defendant.

The above named plaintiffs conceiving themselves aggrieved by the decree made and entered on the 27th day of July, 1916, in the above entitled cause, do hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the Assignment of Errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated: August 29, 1916.

GILBERT, COHN & FISHER,

pp CHARLES C. COHN,
Attorneys for Plaintiffs.

The foregoing claim of appeal is allowed:
Sept. 9", 1916.

E. FINLEY JOHNSON,
Associate Justice of the Supreme
Court of the Philippine Islands.

407 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

S. ERLANGER et al., Plaintiffs,

vs.

OELWERKE TEUTONIA, Defendant.

The above named plaintiffs say that in the record of this case and in the final decree entered therein there is manifest error in the following among other particulars:

First: That the amount allowed to your appellant, to-wit: the sum of P57,062.82, equivalent to $28,531.41, is grossly inadequate in law and under the facts of the case for the service rendered.

Second: That the award of P57,062.82, or $28,531.41, is contrary to the law and the evidence in the case and is a wholly inadequate award.

Wherefore, said appellants pray that for the aforesaid errors found in the record of said cause and said decree the same may be reversed and such judgment entered thereon as ought to have been rendered by the Supreme Court of the Philippine Islands.

Dated: August 29th, 1916.

GILBERT, COHN & FISHER,

pp CHARLES C. COHN,
Attorneys for Appellants.

408 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

S. ERLANGER et al., Plaintiffs,

vs.

OELWERKE TEUTONIA, Defendant.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Oelwerke Teutonia, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington, within one hundred and twenty days from the date of this writ, pursuant to an appeal duly allowed by the Supreme Court of the Philippine Islands and filed in the clerk's office of the said Court on the 30th day of August, 1916, in a cause wherein S. Erlanger

and I. Erlanger are appellants and you are appellee, to show cause, if any, why the decree rendered in favor of said appellants and against you as in the said appeal maintained should not be corrected, and why speedy justice should not be done to the parties in that behalf. Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 9th day
409 of Sept., A. D., 1916.

E. FINLEY JOHNSON,
Associate Justice of the Supreme Court of the Philippine Islands.

Service of copy of the within citation is hereby admitted this — day of August, A. D., 1916.

Attorney for Appellee, Oelwerke Teutonia.

410 Supreme Court, Philippine Islands, Clerk's Office, Oct. 17, 1916.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 10,051.

S. ERLANGER et al., Plaintiffs,

vs.

OELWERKE TEUTONIA, Defendant.

Service by copy of the appeal and allowance, specification of errors on appeal, and citation to appear in the Supreme Court of the United States, is hereby admitted this 14th day of October, 1916.

ROHDE & WRIGHT,
Attorneys for Appellee Oelwerke Teutonia.

411 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

S. ERLANGER et al., Plaintiffs,

vs.

OELWERKE TEUTONIA, Defendant.

Know All Men by These Presents: That we, Charles C. Cohn and Fred C. Fisher, of the City of Manila, Philippine Islands, are held and firmly bound unto the Oelwerke Teutonia in the sum of Five

Hundred ($500.00) Dollars, United States Currency, to be paid to the said Oelwerke Teutonia; we bind ourselves and each of our heirs, executors and administrators jointly and severally, firmly by these presents. Sealed with our seals and dated the 29th day of August, A. D., 1916.

Whereas, the appellants in the above entitled suit have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Supreme Court of the Philippine Islands, on the 27th day of July, A. D., 1916;

Now, therefore, the condition of this obligation is such that if the said appellants shall prosecute said appeal to effect and answer all damages and costs, if they fail to make said appeal good, then this obligation shall be void, otherwise to remain in full force and virtue.

F. C. FISHER,
CHARLES C. COHN.

412 UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

Charles C. Cohn and Fred C. Fisher, sureties named in the foregoing bond, being first duly sworn, each for himself says: That he is a resident and freeholder in the City of Manila, Philippine Islands, and is worth the sum of Five Hundred ($500.00) Dollars, United States Currency, over and above all his just debts and liabilities exclusive of property exempt from execution.

F. C. FISHER,
CHARLES C. COHN.

Subscribed and sworn to before me this 29th day of August, A. D., 1916. Chas. C. Cohn exhibited Cedula #H-72057 issued at Manila, P. I., the 18th day of May, 1916; Fred C. Fisher exhibited his Cedula #F1532, issued at Manila, P. I., the 3rd day of January, 1916.

[Seal of Ricardo Paras, Notary Public, Manila, Philippine Islands.]

RICARDO PARAS,
Notary Public.

My Commission expires December 31, 1916.

Doc. #133.
Reg. #1916.
Page #81.

The foregoing bond is approved this 9th day of Sept., 1916.

E. FINLEY JOHNSON,
Associate Justice of the Supreme Court of the Philippine Islands.

413 Supreme Court, Philippine Islands, Clerk's Office, Dec. 6, 1916.

UNITED STATES OF AMERICA,
Phillippine Islands:

In the Supreme Court of the Philippine Islands.

S. ERLANGER et al., Plaintiffs,

vs.

OELWERKE TEUTONIA et al., Defendants.

Now come the plaintiffs, S. Erlanger et al., by their undersigned attorneys and respectfully represent that by reason of the fact that the record in the above entitled cause is unusually voluminous, it has not been possible to prepare a transcript thereof for transmission to the Supreme Court of the United States within the time allowed for that purpose, and therefore respectfully pray that an additional term of ninety days from this date be allowed for that purpose.

Manila, P. I., December 6th, 1916.

GILBERT, COHN & FISHER,
pp F. C. FISHER,
Attorneys for S. Erlanger et al.

Service of the foregoing petition accepted this day. No objection is made to the granting of the request of the plaintiffs, for an extension of time to the filing of their transcript in the Supreme Court of the United States.

ROHDE & WRIGHT,
Attorneys for Defendant Oelwerke Teutonia.

414 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 10,051.

ERLANGER & GALINGER, Plaintiffs and Appellants,

vs.

THE SWEDISH EAST ASIATIC CO., LTD., et al., Defendants,
THE "OELWERKE TEUTONIA" and NEW ZEALAND INSURANCE CO., LTD., Defendants and Appellants.

Order.

Upon reading the petition of the attorneys for the plaintiffs, Erlanger & Galinger, it is hereby granted an additional term of ninety

days for the transmission of the record of the above-entitled case to the Supreme Court of the United States.

Manila, P. I., December 8, 1916.

E. FINLEY JOHNSON,
Associate Justice of the Supreme Court of the Philippine Islands.

ar.

415 Supreme Court, Philippine Islands, Clerk's Office, Filed A. M. Jan. 31, 1917.

UNITED STATES OF AMERICA,
Phillippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 10,051.

ERLANGER & GALINGER, Plaintiffs and Appellants,

vs.

SWEDISH EAST ASIATIC CO., LTD., et als., Defendants and Appellants.

Now come Erlanger & Galinger by their undersigned counsel and respectfully pray that a further extension of forty (40) days from the 5th day of March, 1917, be allowed for the filing of the transcript of the record in the Supreme Court of the United States.

Manila, P. I., January 30, 1917.

GILBERT, COHN & FISHER,
pp F. C. FISHER,
Attorneys for Erlanger & Galinger.

Service accepted and consent granted to the extension requested this 30 day of January, 1917.

ROHDE & WRIGHT,
Attorneys for Oelwerke Teutonia.

416 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 10,051.

ERLANGER & GALINGER, Plaintiffs and Appellants,

versus

THE SWEDISH EAST ASIATIC CO., LTD., et al., Defendants,
THE "OELWERKE TEUTONIA" and NEW ZEALAND INSURANCE CO., LTD., Defendants and Appellants.

Order.

Upon reading the petition of the attorneys for the defendant "Oelwerke Teutonia" and that of the plaintiffs, Erlanger & Galinger, it is hereby granted an additional term of forty (40) days for the transmission of the record of the above-entitled case to the Supreme Court of the United States.

Manila, P. I., January 31, 1917.

(Sgd.) SHERMAN MORELAND,
Associate Justice of the Supreme Court of the Philippine Islands.

Certified correct:
V. ALLEN,
Clerk of the Supreme Court of the Philippine Islands.

417 In the Supreme Court of the United States.

October Term, 1917.

No. —.

OELWERKE TEUTONIA, Appellants,

vs.

ERLANGER & GALINGER, Appellees,

and

ERLANGER & GALINGER, Appellants,

vs.

OELWERKE TEUTONIA, Appellees.

Stipulation.

It is hereby stipulated by and between counsel for the parties in the above-entitled causes (cross appeals) that, the records therein be-

ing identic, but one need be printed, to-wit, the record in Erlanger & Galinger vs. Oelwerke Teutonia, together with the appeal papers relating to the cross appeal.

H. W. VAN DYKE,
Attorney for Oelwerke Teutonia.
F. C. FISHER,
Attorney for Erlanger & Galinger.

In the Supreme Court of the United States.

October Term, 1917.

No. —.

OELWERKE TEUTONIA, Appellants,

vs.

ERLANGER & GALINGER, Appellees,

and

ERLANGER & GALINGET, Appellants,

vs.

OELWERKE TEUTONIA, Appellees.

Stipulation.

It is hereby stipulated by and between counsel for the parties in the above-entitled causes (cross appeals) that, the records therein bein gidentic, but one need be printed, to wit, the record in Erlanger & Galinger vs. Oelwerke Teutonia, together with the appeal papers relating to the cross appeal.

H. W. VAN DYKE,
Attorney for Oelwerke Teutonia.
F. C. FISHER,
Attorney for Erlanger & Galinger.

[Endorsed:] File Nos. 25,872, etc. Supreme Court U. S. October Term, 1916. Term Nos. 1042 and 1101. Oelwerke Teutonia, Appellant, vs. Erlanger & Galinger. Erlanger & Galinger, App't, vs. Oelwerke Teutonia. Stipulation as to printing record. Filed May 4, 1917.

Endorsed on cover: File No. 25,872. Philippine Islands, Supreme Court. Term No. 1,042. Oelwerke Teutonia, appellant, vs. Erlanger & Galinger. Filed March 30, 1917. File No. 25,931. Term No. 1,101. Erlanger & Galinger, appellants, vs. Oelwerke Teutonia. Filed April 30th, 1917. File Nos. 25,872 and 25,931.

CONTENTS.

STATEMENT OF THE CASE 1
ASSIGNMENTS OF ERROR 11
POINT I.—This Court has jurisdiction in the case at bar ... 12
POINT II.—The Court below erred in holding that plaintiffs were salvors of the cargo of copra in question 15
(*a*) Statement of facts established by the uncontradicted evidence in the case 15
(*b*) Argument on the above point 53
POINT III.—If plaintiffs were entitled to compensation, the Court below erred in allowing them forty per cent of the value of the copra saved and in dismissing the counterclaim of the defendant 60
CONCLUSION 79

AUTHORITIES CITED.

2 *Bouvier's Law Dictionary*, Rawle's Revision 54
Blackwell v. *Sancelito Tug Co.*, 10 Wall. 1 54
Williamson v. *The Alphonso*, 30 Fed. Cases, 4, 5 54
Abbott's Law of Merchant Ships and Seamen, 14th Ed., 994 .. 55
The Henry Steers, Jr., 110 Fed. Rep. 578 69

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

OELWERKE TEUTONIA, *Appellant*,
v.
ERLANGER & GALINGER,
} No. 162

And

ERLANGER & GALINGER, *Appellants*,
v.
OELWERKE TEUTONIA.
} No. 181

On appeal from the Supreme Court of the Philippine Islands.

BRIEF FOR APPELLANT OELWERKE TEUTONIA.

STATEMENT OF THE CASE.

The action in this case is one in admiralty and comes to this Court from the Supreme Court of the Philippine Islands. Both of the parties above-named have appealed from the decision of the Court below.

The original complaint, which was filed on the 5th of August, 1913, in the Court of First Instance of the City of Manila, by Simon and Isidore Erlanger, a firm of mer-

chants of that city trading as Erlanger & Galinger, claimed compensation for salvage both of the cargo that was in process of transportation in, and the vessel known as, the *Nippon*, a Swedish steel steamship of about 4,000 tons gross register, which, on the 9th of May, 1913, while en route from Manila to Hamburg, via Singapore, with a cargo of copra, bean oil and other merchandise, stranded on a reef in the vicinity of the Island of Luzon, about 130 miles from the nearest point on the coast and about 180 miles from the City of Manila (R., pp. 2–9, 52, 198, 219).

Originally the suit was against the Swedish East Asiatic Company, Limited, and others designated by fictitious names as owners of the vessel, the Sveriges Angfartyges Assurans Forening of Gothenburg and others designated by fictitious names as insurers and underwriters of the vessel, the Oelwerke Teutonia and others designated by fictitious names as owners of the cargo, and still others designated by fictitious names as insurers and underwriters of the cargo. One H. B. McCoy was also made a defendant, as Collector of Customs of the Philippine Islands—this because, after salvage, the vessel and the part of the cargo that was saved were placed in his custody as such collector (*Id*).

On the 21st of the same month in which the original complaint was filed, however, counsel for Messrs. Erlanger & Galinger, the plaintiffs in the case, reported to the Court that "all matters between plaintiffs and the defendant, the Swedish East Asiatic Company, Limited, and the other persons interested as owners and underwriters of the steamship *Nippon*, had been adjusted and settled out of Court" and prayed "that the cause be dismissed as to the said defendants," which was accordingly done (*Id.*, pp. 1, 2). Those defendants, therefore, do not appear in the present appeals.

On the 22nd of September, 1913, the plaintiffs, Erlanger & Galinger, filed an amended and supplemental complaint, alleging the stranding of the vessel during the storm of the 9th of May of that year; that thereafter it was abandoned by the captain and crew and left derelict; that the vessel was threatened with destruction; that on the 14th of May plaintiffs chartered from the Government of the Islands a coast guard cutter (the *Mindoro*, Captain George Anderson), and, having taken on board a sufficient complement of experienced and competent master mariners, wreckers, stevedores, divers and laborers, with a full and sufficient equipment of pumps, timbers, diving apparatus, etc., proceeded to the stranded vessel and assumed possession for the purpose of saving it and the cargo; that thereupon plaintiffs undertook and diligently prosecuted the work, and that, as a result, they succeeded in saving the vessel itself and all of the cargo that had not been rendered worthless by too long submergence in the water.

Plaintiffs further alleged that the salvage operations continued from the 14th of May to the 26th of July of that year (1913); that, in connection therewith, they at various times for various periods employed seven steamers, three lighters and two barges; that their expenses for materials were ₱7,709.34, for supplies ₱3,588.89, for labor of 758 men ₱33,860.80, and for other items, including hire of vessels enough to bring the total up to ₱100,000; and they prayed judgment for ₱100,000 for services as salvors of the cargo in addition to the amount of the above expenses incurred in connection with the salvage of the cargo. (Their compensation for having saved the vessel itself had already been arranged for in the settlement out of Court.) In the amended complaint they also charged wrongful efforts on the part of defendants to oust

them during the progress of the work and the circulation by defendants of false and misleading reports that jeopardized their position as salvors, made it difficult to secure labor, etc. (*Id.*, pp. 2–9).

On the 14th of October, 1913, the defendant Oelwerke Teutonia appeared and answered as owner of the bulk of the cargo, which consisted of the copra (*i. e.*, kernel of cocoanut), valued at ₱400,000 or $200,000. The New Zealand Insurance Company appeared and answered as insurer and assignee of 33 crates of agar-agar (*i. e.*, a soluble sea weed or vegetable gum used, among other things, as a culture medium in bacteriology), valued at ₱5,635. The Tokio Marine Insurance Company appeared and answered as insurer and assignee of 1,000 cases of bean oil, sold by the Collector of Customs, after salvage, for ₱4,471.36, and two cases of lacquer, value unknown, and the Thames & Mersey Marine Insurance Company appeared and answered as reinsurer of part of the copra (*Id.*, pp. 9, 212).

The Insular Collector of Customs also appeared and answered, denying any interest in the matter except by virtue of having taken possession of the saved property (*Id.*) Thereafter, at the request of the parties to the suit, the Court ordered that the Hongkong & Shanghai Banking Corporation should have the custody of the proceeds of the sales of the parts of the cargo that were saved and sold, which proceeds were then in the custody of the Collector, and that, on delivery of the funds to the bank, the Collector should be relieved of all further responsibility therefor (*Id.*, p. 16). The funds are now, therefore, in the custody of the bank.

The above-mentioned answer of the Oelwerke Teutonia (which is a German corporation and the only one

of the defendants that has remained in the case) admitted the statements in the first seven paragraphs of the amended and supplemental complaint containing the formal averments. It admitted also the averment in the eighth paragraph respecting the stranding of the *Nippon*. It also admitted what is alleged in the seventeenth paragraph with reference to the floating and temporary repairing of the vessel and the bringing of her safely into port, and the averments of the eighteenth paragraph reciting the adjustment of the plaintiff's claim against the owners of the vessel by the settlement of the matter out of court.

But the averments of the other paragraphs (except in the instances specified by the defendant in the answer) were denied. The defendant denied the averments as to the condition of the vessel, its desertion, the employment of competent help in connection with the salving operations, the diligent prosecution of the work, its perilous nature, the difficulties and necessity for the great amount of expense attending it, also the allegations respecting wrongful efforts to oust the plaintiffs from the vessel, the circulation of false and misleading reports concerning the possibility of a successful outcome of the operations, calculated to make it hard to secure the services of laborers, etc., and, by way of special defense and counterclaim—

The defendant set up that the vessel was not abandoned by the captain and crew without intention to return, but that, on the contrary, it was the intention to return and attempt the salvage both of the vessel and the cargo; that, on the morning of May 13th, four days after the vessel had stranded, the captain declined an offer of transportation to Manila, made by the captain of the *Mindoro*, a Philippine coast guard steamer that had come to his rescue, and accepted instead an offer to take him

to Hongkong, made by the captain of another steamer, the mail steamship *Manchuria*, which, at the request of the chief of the Philippine Bureau of Navigation, had stopped at the reef on its way to Hongkong for the purpose of rendering what assistance it could, and further alleged that the captain of the stranded vessel was influenced in his decision to go to Hongkong instead of Manila by his opinion that better salvage facilities could be obtained in the former port than in the latter.

Defendant further alleged that, at the time plaintiffs took possession of the stranded vessel, it was in no imminent peril; that, after the storm of the 9th of May, the weather was good; that typhoons are of rare occurrence in the China Sea, along the coast of Luzon, in May and June; that, because of its protected position on the reef, the stranded vessel could not have been endangered by ordinary winds; that the services of plaintiffs were not desired; that, although plaintiffs well knew that the captain of the stranded ship was on his way to Hongkong and could be communicated with by wireless telegraph on board the *Manchuria*, they made no effort to ascertain whether their services were desired or not but took possession without authority.

Defendant further alleged that, when the captain of the stranded vessel heard of such unauthorized action on the part of plaintiffs, and as soon as he could return to his ship, he protested against what had been done, and that, on the 15th of May (only a day after possession was taken by plaintiffs and before the salvage operations were begun), the agents of the defendant Oelwerke Teutonia likewise protested, so far as the cargo of copra was concerned.

Defendant further alleged that, through certain employees of the Bureau of Navigation in Manila, plaintiffs obtained the first authentic information as to the situation of the stranded vessel and cargo; that it was by means of a confederacy and combination with those employees that they obtained possession; moreover that plaintiffs were an ordinary mercantile partnership and had no knowledge of the sort of work that is connected with the salvage of vessels and their cargoes or of affairs of the sea; that they owned no salvage apparatus, and that, by reason of their having retained possession of the vessel and cargo after their seizure thereof, the salvage of part of the cargo of copra was prevented, because competent wreckers of Manila refused to enter into contract with the defendant unless possession of the vessel and cargo could be delivered to them.

Defendant further alleged that the total weight of the copra on board was 1,842.28 tons; that because of their ignorance, incompetence, negligence and inadequate means, and through overcaution for the safety of the vessels they employed in the salvage work, the plaintiffs saved only 1,296.36 tons, which were sold by the Collector of Customs for ₱146,737.06, less expenses of sale; and that the amount for which it was sold was so small because the greater part of the copra saved had been damaged by too long submergence in the water in the hold of the stranded steamship.

Defendant further alleged that, if plaintiffs had possessed the ordinary knowledge and skill and had proceeded with ordinary diligence, the whole cargo could have been saved before June 1st, 1913 (*i. e.*, within two weeks after the operations were begun), in good marketable condition; that if the copra had been removed even before the 5th of June, it would still have been of the value of ₱324,169,

but that, because of the plaintiffs' want of skill and because of their negligence, etc., not only was a large part of that which was saved damaged, but 545.92 tons were jettisoned and became a total loss.

Wherefore defendant prayed that the Insular Collector be ordered to pay to the defendant Oelwerke Teutonia the proceeds of the sales of the copra that had been sold and asked judgment of ₱177,432 as compensation for the loss and damage referred to (*Id.*, pp. 9–15).

The issues presented, therefore, were:

(*a*) Whether, under the circumstances, the plaintiffs had any right to take and retain possession of the stranded vessel and cargo,

(*b*) Whether they availed themselves of competent means and help in the prosecution of the salvage,

(*c*) Whether they were negligent or proceeded with due diligence,

(*d*) Whether the defendant Oelwerke Teutonia was entitled to compensation for the loss and damage alleged to have been suffered, and, if so, to how much, and

(*e*) If not, whether the plaintiffs were entitled, as salvors, or otherwise, to compensation for their work, and, if so, to how much.

The Court of First Instance was of opinion (*Id.*, p. 217) that "the plaintiff is entitled to recover one-half of the net proceeds from the property salved and sold * * * and one-half of the value of the property delivered to claimants;" that "they" (the plaintiffs) "are not first entitled to deduct their expenses and then take a moiety of the property salved because the expenses were their risk in making the venture," and that "the Oelwerke Teutonia is entitled to one-half of the net proceeds of the copra salved." The Court, therefore, directed judgment

in favor of the plaintiffs for the sum of ₱74,298.36 ($37,149.18) and in favor of the defendant Oelwerke Teutonia for ₱71,328.53, or $35,664.26 (*Id.*).

To that decision both the plaintiffs and the defendant Oelwerke Teutonia took exception and both moved that the judgment be set aside and a new trial granted on the ground that the decision was plainly and manifestly against the weight of the evidence and contrary to law. Both motions were denied (*Id.*, p. 217).

Thereafter, within the time prescribed by the Code, both parties appealed and filed, respectively, their bills of exceptions and assignments of error (*Id.*), and, on appeal, by a decision dated the 9th of March, 1916, the judgment of the trial court was modified by the Supreme Court of the Islands in favor of the Oelwerke Teutonia. The Court held that, "taking into account the amount the plaintiff has heretofore received" (*i. e.*, from the owners of the vessel in the settlement out of Court) "we have arrived at the conclusion that in equity and justice the plaintiff-appellant should receive for their services (*a*) 40 per cent of the net value of the wet copra salved, (*b*) 25 per cent of the net value of the dry copra salved" (*Id.*, p. 238)—this instead of the 50 per cent of the net value of both the wet and dry copra that was allowed by the trial court.

Judgment was, therefore, ordered in favor of the plaintiffs and against the Oelwerke Teutonia in the sum of ₱41,721.55 (*Id.*) instead of ₱71,328.53. To this decision, also, both the plaintiffs and the defendant Oelwerke Teutonia took exception. On the 30th of March, 1916, the Supreme Court of the Islands granted a petition submitted on behalf of plaintiffs for a rehearing of the case and for permission to make an oral argument in support thereof. As a result, on the 27th of July, 1916, the judg-

ment in favor of plaintiffs was ordered increased to ₱57,062.82, by the allowance of 40 per cent of the value of the dry copra saved instead of only 25 per cent as at first awarded (*Id.*, pp. 239, 240), and, by resolution of all the Justices present, this was ordered spread upon the minutes (*Id.*).

It appears, however (*Id.*), that at the next session of the Court—although the minutes of the session at which the order was made concerning the above-mentioned increase in the judgment were read and wpproved—*the minutes themselves were not signed by the Justices present at the hearing of the motion or by any of them*, and that thereafter the Clerk of the Court entered the judgment as amended by the order allowing the increase, notwithstanding the defect just stated (*Id.*, p. 240).

Whereupon the defendant Oelwerke Teutonia moved that the latter judgment be set aside on the ground that "the decision rendered in this cause before the last vacation of the Court was taken part in and signed by the following Judges: Arellano, Torres, Carson, Johnson and Trent;" that the unsigned order modifying the former judgment "was made at a session of the Court where there were present the following Justices: Torres, Johnson, Trent, Moreland and Arellano," and that "it, therefore, appears that *the order or resolution vastly increasing the judgment was taken part in by only three Justices that participated in and signed the decision in the cause*" (*Id.*).

On the overruling of that objection, both the plaintiffs and the defendant Oelwerke Teutonia prayed the allowance of an appeal and afterwards perfected their appeals to this Court (*Id.* pp. 241 *et seq.*)

ASSIGNMENT OF ERRORS.

The errors assigned by the appellant Oelwerke Teutonia in its petition are as follows:

1. The Court erred in holding that the plaintiffs are salvors of the copra cargo in question.

2. The Court erred in holding that the plaintiffs undertook or underwent hardship or risk.

3. The Court erred in allowing the plaintiffs 40 per cent of the value of the dry copra saved.

4. The Court erred in ordering judgment in favor of the plaintiffs for the sum of ₱57,062.82.

5. The Court erred in dismissing the counterclaim of this defendant.

6. The Court erred in not rendering its final decision in writing, signed by the Justices of the Court.

The errors assigned by the appellants, Erlanger & Galinger, are as follows:

1. That the amount allowed to them, to-wit: ₱57,062.82, equivalent to $28,531.41, is grossly inadequate in law and under the facts of the case for the service rendered.

2. That the award of ₱57,062.82 is contrary to the law and the evidence in the case and is a wholly inadequate award.

BRIEF

POINT I

THIS COURT HAS JURISDICTION IN THE CASE AT BAR.

Through the courtesy of Mr. F. C. Fisher, of counsel for Messrs. Erlanger and Galinger, appellees in the present case and appellants in the cross-appeal herein, we have been given an opportunity to read the brief to be filed by Mr. Fisher in Messrs. Erlanger and Galinger's behalf, Point I of which brief deals with the subject of the jurisdiction of this Court to review the judgment of the Supreme Court of the Philippines in this case and maintains that this Court has such jurisdiction.

This we do not question. On the contrary, in this respect, we concur in what is said by Mr. Fisher. We are of opinion that, in the Oelwerke Teutonia's appeal, as in Messrs. Erlanger and Galinger's, all the elements are present that are essential to the exercise of jurisdiction by this Court: the Courts below had jurisdiction (see reasons given by Mr. Fisher in his Point I), the value in controversy exceeds $25,000 (R., p. 243), the case has been brought to this Court, not by writ of error, but by appeal, and the appeal was allowed and perfected within the time limited by law and the orders of the Court below.

In this connection, in addition to what Mr. Fisher says in Point I on page 10 of his brief respecting the two methods of review, we desire only to recall that, since the creation of its jurisdiction to review the final judgments and decrees of the Supreme Court of the Philippines, this Court itself, in certain habeas corpus, customs, divorce and other cases, has held in effect that whether a case is

to be brought up from the Supreme Court of the Philippines by writ of error or by appeal is governed by the practice in the federal courts in this country.

The case of Gsell *v.* Insular Collector of Customs (239 U. S. 93), which involved an application for review of a classification under the Philippines tariff act, the Court held was wrongfully brought to this Court by writ of error instead of appeal. In the opinion the Court said:

> "This provision" (referring to the jurisdictional section of the act of July 1, 1902, 32 Stats. 691) "as to the manner of review is an essential part of the act and in considering it this Court held in Fisher *v.* Baker, 203 U. S. 174—where an attempt was made to review an order in a proceeding in habeas corpus by writ of error—that, inasmuch as the final order in such cases in the Circuit and District Courts of the United States can only be reviewed by appeal, the same rule governs procedure to review a final order of the Supreme Court of the Philippine Islands and the writ of error was accordingly dismissed. See, in this connection, De la Rama *v.* De la Rama, 201 U. S. 303" (a divorce case); "Behn *v.* Campbell, 205 U. S. 403."

By Section 248 of the Judicial Code the wording of the act of July 1, 1902, of which the Court makes use in the above, was amended by adding before the words "in the same manner" the words "within the same time" and by substituting for "Circuit Courts of the United States" the words "District Courts of the United States," and, as so changed, the provision has since been reenacted as stated by Mr. Fisher; but, obviously, the principle applied by the Court in the opinion just quoted from is equally applicable now in the case at bar.

There would seem to be no doubt, therefore, that if in the United States appeal is the proper method of

bringing up to this Court such a case as is presented in the matter at bar, the taking and allowance of the appeals herein rather than resort to a proceeding by way of writ of error was proper.

POINT II.

THE COURT BELOW ERRED IN HOLDING THAT PLAINTIFFS WERE SALVORS OF THE CARGO OF COPRA IN QUESTION.

STATEMENT OF FACTS

Established by Uncontradicted Evidence in the Case.

In the hope that it may serve to avoid confusion and prove of assistance to the Court in arriving at a clear understanding of the situation presented by this case, we set forth at the outset certain features in evidence that have not been impeached by any evidence submitted by the plaintiffs, and which, therefore, may be regarded as embodying, as far as they go, the established facts in the case. These are as follows:

The Misadventure.

The steamship in question, the *Nippon*, cleared from Manila the 7th of May, 1913, bound first for Singapore, eventually for Hamburg. On leaving Manila Bay, rough weather was encountered, which grew worse until it developed into a typhoon. The next day (May 8th), between 4 and 5 o'clock in the afternoon, the ship was stranded on Scarborough Reef, about 180 miles or 22 to 24 hours distant from Manila by steamers of the sort that plaintiffs employed in their salvage operations, and about 130 miles from Santa Cruz, in the Province of Zambales, the nearest point on the coast of Luzon (R., pp. 142–3, also pp. 21, 52, 198, 219*).

*Hereafter in this brief, unless otherwise indicated, the figures in parenthesis refer to the pages of the Record.

"The first night there was a very bad sea and high wind," Captain Eggert, the Master of the stranded vessel, testified in his deposition (146). "The ship was thrown up all the time on the reef and bumping. Seas were washing right over all the time. Couldn't leave in the boats if we had tried to. The next morning was also bad but a little better." "The water," testified Emil Gohde, the ship's Chief Engineer, "commenced to come in the holds a little after we struck. We left the engine room about 5 minutes after the vessel struck. In three or four hours," he added, "there were between 9 and 10 feet of water in the holds." At high tide it was 9 or 10 feet; at low tide it was lower (159).

All then believed that their lives were in danger. Only one of the small boats was uninjured. The scene of the misadventure was out of the track of commerce. They "did not know the weather in the China Sea" (158). It was feared that if there should be another storm, the ship might slip off the reef and sink (52, 53, 147, 155, 158). About 11 o'clock the morning of the next day (the 9th of May), by the use of oil and other precautionary measures, they succeeded in launching their only seaworthy small boat and Chief Officer Westin and nine of the crew were sent out with instructions to proceed to shore, or else to cause themselves to be picked up, in the event that they should meet any steamer on the way, and communicate with shore for the purpose of requesting that some one be sent out to the reef to take off the twenty-seven, including officers, crew and one passenger (145–7), who remained on board.

Chief Officer Westin, with the nine members of the crew who had set out with him in the small boat, arrived in Santa Cruz three days afterwards, on the 12th, and imme-

diately telegraphed the Director of Navigation at Manila (Mr. Frank P. Helm) as follows:

"*Nippon* stranded on Scarborough Reef. Wants immediate assistance for saving crew. Boats gone." (18, 21).

This message was received at 12.15 p. m. Within about an hour and a half, by order of Director Helm, a steam coast guard cutter, the *Mindoro*, under command of Captain George Anderson, left Manila for the stranded ship, equipped with life-saving apparatus and supplies (19). Captain Dixon, in command of the mail steamship *Manchuria*, which left Manila at 3 o'clock the same afternoon for Hongkong, and which was faster than the coast guarp cutter, was also asked to stop at the reef (20).

The Rescue.

Later the same day, the Director of Navigation, Mr. Helm, radiographed Captain Dixon of the *Manchuria* from the Signal Corps station at Manila:

"Please communicate with Captain Mindoro. If not possible Captain Mindoro, ask Captain Nippon tell Captain Mindoro, en route back to Manila, to stop Santa Cruz, pick up Chief Officer *Nippon* and nine men. Latest report twenty-six men still on *Nippon*. Ship well on reef. Stern part afloat. Ten feet water in holds. Starboard list. Heavy swells breaking over. Little hope of saving ship. Thanks for assistance" (19).

The same afternoon Director Helm had also telegraphed Chief Officer Westin of the *Nippon* at Santa Cruz:

"Coast guard cutter left one-thirty, *Manchuria* at three. Wire details of condition of vessel when you left her."

To this Westin had replied as indicated in the above, which contains the substance of the information he wired the Director (19).

The next day (the 13th of May), at 9.40 a. m., Captain Dixon advised Director Helm by radiogram from the *Manchuria:*

"All rescued from the *Nippon.* Stranded on extreme north end of shoal. Vessel stranded May 9th" (obviously a mistake; she was stranded on the 8th). "She is full of water fore and aft and is badly ashore. Ship abandoned. Proceeding Hongkong."

Later the same morning Captain Dixon added by radiogram to his company's office in Manila:

"Have just left the wreck for Hongkong. Gave *Mindoro* orders proceed to Santa Cruz. Inform Helm. Twenty-seven of crew of *Nippon* rescued. All are well." (19)

With respect to the rescue, Captain Eggert of the *Nippon* testified that he and the passenger and the others of the officers and crew who had not set out with Chief Officer Westin in the small boat remained on the *Nippon* from the day she stranded (on the 8th of May) until the morning of the 13th, when, about daylight, they sighted the smoke of the *Manchuria*; that the *Manchuria* came up to within about two miles of where the *Nippon* was lying; that, as soon as the *Manchuria* came close enough and before she had stopped, the second officer of the *Nippon* and some of the crew put out in the only remaining boat (one of those that had been injured, p. 147) to meet the *Manchuria* and went aboard; that Captain Dixon of the *Manchuria* sent one of that ship's boats for the others, and that after all were aboard the *Manchuria,* they sighted the Government coast guard cutter *Mindoro* (142–3).

Captain Eggert was next asked: "Why did you leave on the *Manchuria* for Hongkong instead of coming to Manila

on the coast guard cutter *Mindoro*?" and answered: "I went to Hongkong because I knew I could have anything that would help me to salve the steamer, and I knew that, in comparison to Manila, there was very slight means for the work in Manila of that class, and in Hongkong I knew all the stores that were able to undertake a work like that."

In this connection, on cross-examination Captain Eggert was asked and answered (p. 147, 151, 153–4):

> "*Q.* Do you remember being asked on that occasion" (at a conference in the residence of the Vice Governor of the Islands, held some time after the misadventure) "whether you regarded with relief the appearance of the *Manchuria* and was glad to leave your vessel?
>
> "*A.* I would not deny it. * * * We were all mighty glad.
>
> "*Q.* And why were you mighty glad?
>
> "*A.* Chiefly because my crew had insisted on leaving the ship in some way, by building life rafts, or in that boat of ours" (the remaining one, which was broken), "and secondly because of the uncertainity. We did not know if our boat had reached shore" (meaning the one sent out in charge of Chief Officer Westin). "The scene of the accident was quite out of the track of any vessel, so it was quite natural when we saw that ship coming up we were glad to get into communication with the outer world.
>
> * * * * * * *
>
> "*Q.* Captain, if your purpose in leaving the *Nippon* was to go to Hongkong for the purpose of aranging for her salvage, why did you not leave some of the crew on board?
>
> "*A.* How could I leave some of the crew on board when there was no attendants? There could be a gale at any time and the ship would have slipped off and broken to pieces. I first of all was responsible for their lives."
>
> * * * * * * *

(Redirect.)

"*Q.* Captain, did you, or did you not, leave the *Nippon* with the intention of returning and the hope of recovering your ship and cargo?

"*A.* I left the *Nippon* with the full intention of returning to the ship and try to recover her; and I discussed that matter during the three days we were on the reef with every member I could see in the crew and with the passenger. Everybody knew, as soon as I put my foot on the *Manchuria*, it was for the purpose of getting assistance. Captain Dixon" (of the *Manchuria*) "knew it, his officers knew it and his crew knew it."

(Recross-examination.)

"*Q.* You have not fully replied to the question asked you by counsel for the defendant, which is whether you had the hope of recovering the ship?

"*A.* I had the hope if the weather continued fine.

"*Q.* If you had that hope, why didn't you leave some of your crew on board?

"*A.* Because the hope would not justify my leaving any of the crew on the ship. * * * A hope is always slight. I mean to say your hope will never justify you to risk another man's life even if you have a very good foundation for your hope. Life comes before property."

In most of this Captain Eggert was corroborated by the Chief Engineer of the *Nippon*, Mr. Emil Gohde (p. 156 *et seq.*), and not an officer or member of the crew of either the *Nippon* or *Manchuria* was called to contradict it.

The seizure of the vessel and cargo by plaintiffs; efforts of the agents of the owners and insurers to obtain possession; their protests.

On the 14th of May, after they had been brought from Santa Cruz to Manila, the nine men who had set out from

the *Nippon* on the 9th with Chief Officer Westin made a statement, which appears in the Record among certain certified copies of correspondence that were supplied by the Bureau of Navigation, and with reference to which it was stipulated that the copies mentioned "be admitted in evidence and that the statements contained therein be considered by the Court with the same effect as though the persons by whom" they were signed "had appeared in Court and testified to the facts therein set forth."

The statement referred to is as follows:

> "We, the undersigned officers and part of the crew of the Swedish Steamer *Nippon*, do hereby declare that the S. S. *Nippon* struck on Scarborough Reef about 4:30 on the afternoon of Thursday, May 8th, 1913. Two of her boats were lost after we struck the reef, leaving only two aboard and those damaged. The ship was filling with water and pounding on the reef, and we considered her a wreck. In company with the Chief Officer, we left the ship about noon on Friday, May 9th, 1913, in a small boat and reached Santa Cruz, Zambales, a distance of 130 miles, on the morning of Monday, May 12th, 1913, and immediately the Chief Officer wired to the Director of Navigation at Manila for assistance to rescue the balance of the crew left aboard the *Nippon*, as we considered their lives in danger and the ship a wreck, with little hope of saving her."

This, however, was not, as it was stated to have been, signed by any of the officers; it was not signed even by Chief Officer Westin himself. At whose instance it was issued and for what purpose is not disclosed, though the inference seems plain, as we shall point out hereinafter.

When giving his testimony, Mr. Simon Erlanger of plaintiffs' firm, was questioned about it (35). He said:

"I understood that one of the officers of the *Nippon* and some members of the crew arrived on the Island of Luzon requesting assistance to save life from an abandoned wreck." The witness further said that he had "seen a copy of the statement of the crew that they abandoned the ship—those that came ashore;" that there was a copy of the statement "in our records ready for submission at the proper time."

When asked whether it was given to the Bureau of Navigation, he said: "It may have been;" that "it was given to Mr. Reis, a copy of it." (Mr. Reis was the Manager of his firm's shipping department.) To a remark by the attorney who was questioning him, to the effect that he (the attorney) supposed "that information came through the Bureau of Navigation" Mr. Erlanger replied: "It may have come through them." Mr. Reis himself was not questioned about the statement specifically, for he testified (44) that, aside from the various reports that appeared in the newspapers of Manila on the 13th of May, he had had no "means of knowledge in regard to the situation or condition of the *Nippon*."

On the 13th or 14th of May, following the exchange of telegrams and radiograms above referred to, plaintiffs conceived the idea, or the idea was suggested to them, that as a business venture, they might attempt to save the stranded vessel and cargo, and, with that in view, they telegraphed the Governor-General of the Islands requesting the assistance of the Bureau of Navigation (36). On the 14th the Governor-General ordered the Director, Mr. Helm, to "place whatever assistance possible at disposal of Erlanger & Galinger to salve *Nippon*." (20). The same day Erlanger & Galinger wrote the director:

"We have the honor to request that you please charter us one of your cutters for the purpose of sending a party to board the stranded and abandoned steamer *Nippon*, this charter to remain effective until cancelled by us" (20).

On this letter someone, presumably the Director, Mr. Helm, afterwards endorsed: "O. K. Let them have the *Mindoro* at ₱225 per day until released by the charterer."

Subsequently the same day Director Helm sent the commander of the *Mindoro* (Captain George Anderson) the following order:

"When ready for sea in all respects and Mr. Ben Taylor, representing Erlanger & Galinger, is aboard, you will proceed to Scarborough Reef, where you will land Mr. Taylor upon the S. S. *Nippon*, which is stranded on that reef. You will also leave one boat and about ten men with Mr. Taylor. After completion of this order, return to Manila" (21).

The order was obeyed so far as the placing of Mr. Taylor on board and the leaving of the life boat were concerned but there were left with him four men instead of ten: four native Filipinos (78).

In the meanwhile no effort whatever was made by plaintiffs to communicate with Captain Eggert of the stranded ship for the purpose of ascertaining whether their services were desired. This was admitted by Mr. Simon Erlanger, a member of plaintiff's firm in his testimony (35), yet he acknowledged that he knew of a report that Captain Eggert was on board the *Manchuria* bound for Hongkong (*Id*). It was also admitted by Mr. Reis, Manager of the plaintiffs' shipping department and who had general charge of their salving operations in connection with the *Nippon*. He also knew that Captain Eggert was on his way to Hongkong (60).

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Also, the same day (the 14th of May, at 11 o'clock a. m.), Messrs. Struckman & Company, agents of the owners and underwriters of the copra, caused to be delivered at the office of the Bureau of Navigation, addressed to Mr. Helm as Director, a letter informing him of their agency and requesting that he let them have a report by the Captain of the *Mindoro* as soon as that vessel should arrive in port that afternoon and "particularly with respect to a possibility of the salvage of the cargo" (21, 207). It was that afternoon that she was to return from her first trip to the stranded ship, the one she had made on her mission of rescue; but the *Mindoro* arrived that afternoon and was sent out to the reef again—this time under the above-mentioned charter to plaintiffs—before any report (at least anything other than an oral report) was submitted by Captain Anderson. His written report was not made until the 16th, as appears from its date (23).

On this point what Mr. Stroebel, of the firm of Struckman & Company, said was uncontradicted. He was questioned and answered when giving his testimony (207):

> "*Q.* Did you receive any reply to that letter?" (meaning the one above referred to that was delivered at Mr. Helm's office on the 14th).
>
> "*A.* Not a written reply. The letter was delivered to the Chief Clerk because Mr. Helm was busy and he promised to give us the advice requested but we never heard anything from him.
>
> "*Q.* How did you come to go to Mr. Helm's house in the evening, Mr. Stroebel?" (meaning the evening of the 14th).
>
> "*A.* We had been busy all day long to engage, to charter a vessel to go out, and we could not find a vessel. We could have gotten the *Vizcaya* but I thought the vessel was too big. Now, in the evening I met Captain Hessel in his house and he suggested

that we go right over to Mr. Helm. 'He lives over there and I am personally acquainted with him and we will see if we can get a coast guard cutter from him." (Captain Hessel was a wrecking expert and had been an officer in the Bureau of Navigation, R., p. 27, 180.)

"*Q.* Then did you go and see Mr. Helm and speak about it?

"*A.* We went there and Mr. Helm informed us that he could not give us a coast guard cutter because the only available one had been chartered to Erlanger & Galinger and that it had gone out already, so there was no use to bother about it any more."

On cross-examination the witness testified (210, 211)—and this was likewise uncontradicted:

"*Q.* Mr. Stroebel, you stated, I believe, that you had an opportunity to charter the S. S. *Vizcaya* on May 14th from Messrs. Ynchausti & Company?

"*A.* Yes, sir.

"*Q.* And that you didn't take it because you thought it was larger than necessary?

"*A.* I didn't take her because Erlanger & Galinger took her. We were going around Manila to see what ships were available, and, when I came back to Ynchausti & Company, they had chartered to Erlanger & Galinger."

On the 15th of May, the next day following those efforts, Struckman & Company received from Messrs. Haussermann, Cohn and Fisher, who were acting in the capacity of attorneys for plaintiffs, a letter announcing that the stranded "vessel and her cargo are now in the lawful possession of Messrs. Erlanger and Galinger, who, as salvors of the same, have proceeded with diligence, after the abandonment of the vessel, to the scene of the wreck with

a full and sufficient complement of vessels, apparatus, equipment and men and are now engaged in said salvage service."

The writers said further (208–9):

> "We deem it important, therefore, to advise you of the present situation in order that you may be spared the useless expense of undertaking an unnecessary expedition and may be duly advised that we, as first salvors of an abandoned vessel, are in possession and are able and willing to complete the salvage as well as could be done by any means which are locally available. If, notwithstanding this notification, you shall see fit to dispatch an independent salvage expedition, we shall be compelled to insist upon our rights of possession," etc.

Yet the uncontradicted testimony of plaintiffs' own witnesses shows that, instead of having *already* proceeded as stated by Messrs. Haussermann, Cohn and Fisher, the "vessels, apparatus, equipment and men" necessary to begin the salvage work were not sent out to the scene of the wreck until the 16th of May, the day after the letter from which we have just quoted was written, and they did not arrive at the wreck until the day after that.

In this regard Mr. Simon Erlanger, his manager, Mr. Reis, and Mr.Ben Taylor themselves testified that when the *Mindoro* was chartered by plaintiffs and sent out on her first trip under the charter (the afternoon of May 14th), she took with her only Mr. Ben Taylor and four native Filipinos, with no other equipment than a lifeboat, and that Taylor's orders were only to hoist the American flag and take possession for the purposes of salvage, not at that time to begin the work himself (Erlanger, 31, 32; Reis, 45; Taylor, 78).

Plaintiffs' manager, Mr. Reis, who was placed in general charge of the work, testified that it was not until the 16th of May, two days after Taylor was sent out to take possession (45) that the supplies and men were sent out on the *Mindoro* and *Vizcaya* to begin the operations. Taylor testified that it was not until the 18th, when the *Mindoro* had gone back to Manila after her first trip under the charter and had again returned to the reef, that the work was begun (78). In the meanwhile, according to the testimony of that witness, they "*did nothing at all, just kept charge of the ship*" (*Id.*).

Captain Anderson of the *Mindoro* testified that the day they began work was not the 18th, as stated by Taylor, but the 17th, at 12.45 p. m. (94–5), but, which ever of these witnesses was right as to the exact date, they are agreed, and it is therefore certain, that at least two days elapsed between the taking of possession and the beginning of plaintiffs' so-called salvage operations. It results that it is certain also that the apparatus, equipment and men had not been sent out on the 15th when the letter of Messrs. Haussermann, Cohn and Fisher quoted from above was written.

To their letter, however, Messrs. Struckman & Company replied *on the day of its date, i. e.*, the 15th of May (209, 210):

> "We acknowledge receipt of your to-day's letter and beg to call your attention to the following advertisement, which we caused to appear in several local newspapers:
>
> NOTICE.
>
> " 'Notice is hereby given to all the world that nobody is permitted to go on board the Swedish steamer *Nippon* at present on Scarborough Reef off the coast of the Philippine Islands, or to remove any part of her cargo without permission of the undersigned.

" 'Any person taking property from said ship without our permission will be considered by the undersigned owners as taking their property without their consent and will be compelled to account for the same under the laws relating to piracy on high seas and so forth.

" 'We further state that the owners and underwriters of the cargo absolutely prohibit any person with interfering with the cargo, which is their property and is in as safe a condition as they desire to have the same at the present time.'

"If you obstruct, or cause to obstruct, the inspection of our representatives with regard to the actual condition of steamer and cargo, we will endeavor to hold you responsible therefor. Please note that the cargo is not at all abandoned."

The next day, the 16th of May (*and this too was before the salvage operations were begun*) Messrs. Struckman & company caused to be delivered *to the plaintiffs themselves* a letter containing the following (210):

"We are informed that you are making preparations to take from the Swedish S. S. *Nippon* on Scarborough Reef the cargo of copra in the belief that you are salving the same. We notified your attorney yesterday that we desire no interference with the cargo of said ship and protest against the same.

"Please take notice that *we ourselves*, as representatives and the underwriters, *have for the last few days taken steps to safeguard our property, the cargo of said vessel, and are amply able to do so. Any interference on your part with the cargo could only make the operations of experienced seamen more difficult.* We, therefore, request you: respect our property rights and let us take care of our own affairs.

"Our representative leaves for the scene on the S. S. *Ant. M. Poizat* with experienced salvors men this afternoon."

In accordance with this announcement, a representative of Struckman & Company did go out to the stranded ship and demand possession, as was admitted by Mr. Simon Erlanger in his testimony (40, 41). In this connection Mr. Erlanger was questioned and answered:

"*Q.* When did Struckman & Company first intervene in the matter of the salvage of the *Nippon?*

"*A. On the morning of the 15th of May.*

"*Q.* In what capacity did they intervene?

"*A.* As representatives of the ship and cargo.

* * * * * * *

On cross-examination:

"*Q.* Did you have any direct interference by Struckman & Company?

"*A.* Yes, sir; by coming aboard the ship and objecting to everything that was done.

"*Q.* They demanded possession too, did they not, and insisted upon their right to salve the cargo?

"*A. They demanded possession of the ship.*

"*Q. For the purpose of salving the cargo?*

"*A. Yes, sir; so they said.*

"*Q. And that was about the 16th of May?*

"*A. About the 16th, the first time.*

"*Q.* Did you refuse to give them possession or to allow them to assist?

"*A. I refused possession.* They offered no assistance."

See, also, letter of Director of Navigation Helm, dated May 16th, in which he said he understood that Struckman & Company "have chartered '*Poizat*' to go to site of wreck" (24), and the testimony of Miller, a marine surveyor, who said that he was at the site of the wreck on the 18th of May at the request of Struckman & Company (185–6).

But, to resume: Not having received the report that had been promised on the 14th, Messrs. Struckman &

Company wrote Director of Navigation Helm on the 15th of May (22):

> "We regret to inform you that, in consequence of your not having given us the information of the arrival of the Coast Guard Cutter *Mindoro* in Manila as requested in our letter of yesterday, the underwriters we have the honor to represent have been put to much inconvenience and possibly to great and unnecessary loss. You told us in your private residence last evening that the Captain of the *Mindoro* had given only a verbal report, * * * but, in the absence of a written report, we shall consider it a favor if you will reproduce us in writing the main features of the verbal report," etc.

This brought from Director Helm a reply, dated the same day, in which he said in part (22, 23):

> "As I have said before, I could place no reliance whatever on recommendations as to salving the vessel in a written report of the Captain and officers of the *Mindoro*, as they are not competent to pass on this sort of work, but I will have a written report made and sent you as requested."

Mr. Helm said further as though by way of recrimination, in response to the charge of remissness:

> "This Bureau has, at all times, endeavored to help legitimate business, but it is impossible to teach people to help themselves. If you had chartered the boat" (the *Mindoro*) "at the time First Officer Westin telegraphed from Santa Cruz, or had intimated that on the return of the boat you desired to charter her, she would have been reserved for you. I am not in a position to show any favoritism, and, as Erlanger & Galinger first asked for the vessel, she was naturally given to them, and, having no other boat available whatever, I had to tell you so."

What was done by the Director or by anyone connected with the Bureau of Navigation to *help* Messrs. Struckman & Company does not appear. All that does appear in this regard is that their request for information as to what the Captain of the *Mindoro* had reported respecting the possibility of salvage was not promptly complied with; that they were told that they could not have the *Mindoro* because it had already been chartered to Erlanger & Galinger, and that no other vessel was available.

And it does appear from the uncontradicted testimony of Mr. Stroebel that it was not within the range of possibility for Struckman & Company to have asked for the *Mindoro* or any other vessel in the service of the Bureau on the receipt of the telegram from Chief Officer Westin because it was not until *the morning of the 14th*, the day after the telegram was received, that Struckman & Company had any knowledge that the parties they represented were interested in the fate of the stranded vessel or its cargo. On this subject their first information was obtained from a cablegram sent them by their principals and not received until the 14th (211).

Another thing that appears is that when Captain Anderson of the *Mindoro* did at last submit his report on the 16th of May, he said (23, 24):

> "I took on board all baggage packed standing on deck and sounded around the ship, fore and aft, finding 11 feet of water forward at low water and 20 feet aft in Board, gradually decreasing from forward to aft, and I found in holds about 8 feet of water, and *the cargo, as far as I could see, on top, was nice and dry, and it is my opinion that with the position the ship is lying in and with the S. W. monsoon blowing, the ship and most of the cargo can be salved if work is started before the heavy typhoon season sets in.* * * * On my second trip to the wreck, May 15th, I exam-

ined the *Nippon* more fully and I believe that if the cargo is taken out the ship can be saved after the holes are patched up, if this is done before the heavy weather sets in."

Further Protests

Another thing that is uncontradicted is that Captain Eggert, in behalf of the owners, insurers and underwriters of the stranded ship itself, and other persons with respect to parts of the cargo other than the copra, likewise vigorously protested.

Captain Eggert testified that the first thing he did after arriving in Hongkong, about 5 o'clock in the afternoon of the 14th of May, was to go to the office of the agents in that city of the stranded steamship's owners; that, finding the office closed, he went to the residence of the Manager, and that from there he despatched to the Swedish East Asiatic Company, Limited, of Gothenburg (*i e.*, the owner of the vessel), a telegram. In that telegram he informed the company of the misadventure, announced his arrival in Hongkong, advised the Company of the rescue of the officers and crew, and, after having stated that the ship was wrecked on a reef, said that, as it would "probably slip off and sink by the first gale," *he was "arranging to visit wreck and attempt salvage."* (143, 155).

In this connection Captain Eggert further testified that, while negotiating with several concerns in Hongkong with a view to arranging for salvage (143), he received, May 17th, from the owners of the vessel (144) the telegram in code wording a translation of which is set forth on pages 155 and 156 of the Record, and which in part reads as follows:

"We are informed that vessel has been seized as a prize by Government. Underwriters have requested

> Lloyd's agents Manila to protect our interest and their interests. Consult Lloyd's agents. Telegraph what you can do. Look after our interests. Report upon salvage prospects. If not total loss, let crew remain until further notice."

It is not remarkable that at that early stage some one concerned should have misunderstood the situation and cabled the owners in Sweden that the stranded ship had been seized by the Government when it is considered that a Government steamer had taken Taylor out and put him aboard with a Government lifeboat; that Taylor had hoisted the American flag, and that he had himself been an employee of the Philippine Bureau of Navigation just before his employment by plaintiffs (75). There was opportunity for such a misconception, for plaintiffs' was not the only expedition that went out to look at the stranded steamer the day Taylor left Manila on the *Mindoro* to take possession (Peters, 204; Wegener, 205).

However, the first steamer Captain Eggert could get out of Hongkong for Manila left Hongkong the 20th of May (144). When testifying as to his procedure thereafter, he was questioned and answered as follows (*Id.*):

> "*Q.* And what did you do upon arrival in Manila?
> "*A.* The first thing I did I went to Messrs. Kerr & Company, they having been appointed to look after the ship's interests.
> "*Q.* And then what did you do?
> "*A.* After having been told that things had been going on here, I went to the Swedish Consul.
> "*Q.* Did you go out to your ship?
> "*A.* Yes. I tried the same day to charter a steamer but could not get any. I got the *Basilan* on the 24th. I wouldn't be sure of the day. Anyway I went out there as soon as I could." (He arrived at the reef on the 26th—Miller, 185–6.)

"*Q.* And what did you do after your arrival at the ship?

"*A.* Of course I had some people with me—the people that were going to testify as to the state of the steamer, possibility of salvage, etc. The first thing I did on going on board I handed to the man in charge of the ship a written demand for having command of my ship. My signature to that paper was witnessed by the Consular certificate.

"*Q.* Who did you find in charge?

"*A.* Mr. Ben Taylor. He told me he was in charge of the ship by the order of Messrs. Erlanger & Galinger.

"*Q.* And what answer did he give you to that demand?

"*A.* Of course he refused to give it up, and he gave me that in writing."

It will be appreciated that Captain Eggert could not very well have attempted to take possession *by force*, when it is understood that the Record shows that by that time Taylor and his original party of four Filipinos had been reinforced by a number of other American employees of the plaintiffs and 135 laborers (Reis, 47, 49). Captain Eggert was too overwhelmingly outnumbered.

Also not a word of the testimony just quoted was contradicted. On the contrary, as to the demand and refusal he referred to, he was corroborated by Captain Breckwoldt (171). In this connection, Mr. Erlanger admitted that others besides Struckman & Company had intervened, including Messrs. Kerr & Company (40, 41), the firm Captain Eggert testified had been appointed to look after the interests of the ship. When asked whether on any occasion he had offered "to compromise or adjust the matter" with the protestors, Mr. Erlanger answered no (42).

And even the above were by no means the only efforts that were made to induce plaintiffs to yield possession. Conferences were had by representatives of those concerned in the ownership and insurance of the vessel and cargo with Mr. Simon Erlanger and his attorneys (37–9, 53, 123, 151, 173, 208–9).

With respect to the first of the conferences (*i. e.*, one that was held at the residence of Major-General Bell on the 21st of May), and at which the Acting Governor-General of the Islands was present (35), the then Collector of Customs, Col. McCoy, who was also present, testified that Captain Breckwoldt appeared in behalf of the underwriters, Mr. Underwood (of Kerr & Company) in behalf of the owners of the ship, Captain Eggert in the same behalf, Judge Rohde (one of the attorneys who afterwards represented the Oelwerke Teutonia's interests in the courts below) and Mr. Stroebel in behalf of the copra cargo.

These gentlemen, the witness said, "endeavored to convince the Governor that he should take measures to remove the personnel of Erlanger & Galinger;" that they "all protested against Messrs. Erlanger & Galinger proceeding with the salvage work" (124). His testimony continued (*Id.*):

> "Mr. Fisher: Colonel McCoy, please state whether or not at that time anything was said about the cancellation of the charters of the coast guard boats being used by Erlanger & Galinger in the salvage operations?
>
> "*A.* That was one thing the Governor was asked to do.
>
> "*Q.* By whom?
>
> "*A.* By the people representing the boat. They asked the Governor to refuse to permit Erlanger & Galinger to charter Government vessels for this pur-

pose and they objected strenuously to the chartering of the boats to Erlanger & Galinger for the purposes of their salvage operations."

The Marine Surveyor, Captain Breckwoldt, who was acting for the Hamburg underwriters of the cargo (170, 173), testified to still other efforts. On this subject, on cross-examination, he was questioned and answered (175):

"*Q.* Did you take any steps towards interesting the State Department of the United States Government at Washington?

"*A.* Yes, sir.

"*Q.* Did you take any steps toward interesting the Government of Sweden?

"*A.* Yes, sir.

"*Q.* Did you take any steps toward interesting the Government of Germany?

"*A.* Yes; I wired right home.

"*Q.* The purpose of all these steps was what?

"*A.* These steps were for the reason that we were the owners of the cargo and I was representing the cargo and we wanted to do the work ourselves.

"*Q.* You were not the owners of the cargo. You were the insurers.

"*A.* Yes, sir. In this way it was the same. As I can't take the steps myself, I can take those steps through the owners.

"*Q.* How long did your dissatisfaction with the salvage work of Erlanger & Galinger continue?

"*A.* Right from the beginning * * * right to the end."

The stranded ship was in no imminent peril; the risk of storm was only slight.

For a period of at least a month and a half following the typhoon of the 9th of May there was little if any reason for apprehension that the *Nippon* was in any danger of

slipping off the reef and sinking. At the time he left the ship Captain Eggert may have thought there was, but he knew nothing about the probability or improbability of such an occurrence. He had never been to Manila before (see his own testimony, 143); they "didn't know the weather in the China Sea" (Chief Engineer Gohde, 158).

As the event proved, there was in fact no such likelihood. From uncontradicted reports of the Director of the Weather Bureau of the Islands, it appears that in the month of May, since 1880, or for 34 years prior to 1913, there had been only 18 "cyclones or baguios" (hurricanes), and only 16, during these years, in the month of June. The one of the 9th of May having already occurred, therefore, there was small reason to anticipate another soon after. It further appears that the actual experience was that the weather was good during all the rest of May and the whole of June.

The reports in evidence show that "during the second half of May and the whole month of June, 1913, as a consequence of the absence of typhoons, stated elsewhere, the velocity of the wind was much below the normal of the said period. * * * The sea of the southern part of the China Sea, according to the reports received from Iba" (a station on the Luzon coast between Manila and Santa Cruz), "was generally smooth; it was moderate only on the 7th and from the 9th to 19th of June, 1913" (139, 140).

Besides this, the location of the ship was favorable for the purposes of salvage—that is, so far as the danger of its slipping off and sinking was concerned. Chief Officer Westin, in his telegram of the 12th of May to Director of Navigation Helm, reported her "well on the reef" (19). Captain Dixon of the *Manchuria* said in his radiogram of

the 13th of May to Director Helm that she was "badly ashore" (*Id.*). Captain Ben Taylor, who was the first of the plaintiffs' superintendents to be placed in charge at the scene of the misadventure, described the position as follows (80):

> "The vessel was lying on the reef due east and west, on a gridiron you might call it—that's what it looked like—just like on a gridiron, this coral reef that sticks up there. * * * She was resting on five ridges. The main place there was a hollow in the bottom of the vessel, and one point of the reef was in that hollow place in her bottom. The bottom of the vessel was caved in. That was why it was so hard to get her off. You couldn't pull her off on account of this piece of the reef sticking up in there."

He continued on page 84:

> "The vessel was just picked up on a heavy roller, a heavy swell, and put right up on there, picked right up and came down on the boulders or mounds on the reef, whatever you want to call them, and you couldn't drag her off, Judge; you would tear her all to pieces that way. She had to be lifted up off this place where she was resting. There was one part of the reef where it had jammed in the bottom of the ship so that there was a hollow place there (illustrating by the palm of his hand with the fingers slightly bent downwards). That meant we had to discharge all the cargo and the coal as well and even then we had to wait for the high water in the early part of July and the latter part of June—every year we have high tides here about that time of the year. * * * This one place in the bottom was bent in about five feet from the normal, that is, five feet up, you understand, bent in five feet up from the keel. You had to float her off absolutely, sir; you had to lift her up; you couldn't drag her off."

We have found nothing to the contrary of this in the Record. Taylor's statement, on the other hand, was in part corroborated by one of plaintiff's engineers, Mr. Ruttledge. When asked why the holes in the ship could not be plugged from the outside, he said (105): "The rocks had penetrated the hold of the ship and to get at those holes it was necessary that the ship should rise off these rocks, and, to make it possible to get to those holes, the copra had to be taken out of the ship." And plaintiffs admitted (complaint, 6, 7) that, as a matter of fact, although their alleged salvage operations were begun on the 17th of May, and although work was being done on the hull of the vessel while the copra was being gotten out (Cohn, 55, 56), it took them about a month and a half to float the ship; they did not get her off and into Olongope, for the further temporary repairs required to enable them to tow her to Manila, until the 2nd of July (6).

Plaintiffs and their employees were placed in no danger of loss of life or personal physical injury by storm or because of the position of the stranded ship.

Since the weather continued good throughout plaintiff's operations and since, because of the position in which she was lying, the stranded steamship was in no imminent peril from wind or wave, it follows that plaintiffs and their employees could have incurred—at least from the weather or the position of the vessel—little, if any, risk of loss of life or of any other injury of a personal nature. From these sources there was in fact no danger, as was proved by the experience.

That there would be little, if any, such risk must have been known to plaintiffs from the beginning, for, before the salvage apparatus and work force were sent out

on the 16th, Captain Anderson of the *Mindoro* had been out to the reef twice, the second time under the charter of the *Mindoro* by plaintiffs themselves, and had made his report in writing, not only as to the situation of the stranded steamer but as to the possibilities of salvage (23). Mr. Simon Erlanger admitted in his testimony that the object of the second trip was "to discover if the abandoned wreck was above water or not," etc. (32), and Mr. Reis testified that "after we learned of her abandonment and chartered a boat to go out there, we found out what she was loaded with and how she was loaded and who had loaded her here" (60).

In this connection, it appears that *personally* plaintiffs took no risk whatever, of any sort. One of them Mr. Isidore Erlanger, was not even in Manila at the time; he was "in the States" (66). In his testimony, the other member of the firm, Mr. Simon Erlanger, mentioned having visited the stranded vessel only once: about six days after the first trip of the *Mindoro* (33). The witness Brown, who worked on the stranded vessel from the latter part of May until some time in July, never saw him out there (160); he was not said to have been there by any other witness.

To Mr. Reis, the Manager of his firm's shipping department, Mr. Erlanger left the obtaining of the salvage apparatus (33, 36), entrusted him with the approval of all expenditures (5) and the payment of the men (52); he turned over to him the direction of how the salvage was to be conducted, and, through him, communicated his instructions (49, 59). In addition to this, he placed the actual charge of the operations on board the stranded ship itself first in Captain Taylor and afterwards in Captain Anderson—this when the latter had "quit the

Government" on the 27th of May (49, 61, 78, 95). Mr. Reis did not go out to the vessel at all while she was on the reef (49).

So far as the employees and laborers who were at work on board the stranded ship were concerned, when asked whether "any steps were taken with a view to safeguarding the lives of the men who were employed on the *Nippon* while removing her cargo," the Manager, Mr. Reis, answered: "We always had a steamer standing by to take off the men in case of a storm or in case of any accident" (53); besides which a physician was sent aboard "with all kinds of supplies and medicines" (Taylor, 82).

So it would appear that there was little if any risk from wind or wave even for the workers on the vessel herself.

Plaintiffs were inexperienced in salvage work and engaged in the attempt purely as a commercial venture.

It was also not disputed that in work of this character, the plaintiffs had had no previous experience. Mr. Simon Erlanger admitted that he was a merchant; that the line in which he dealt was general importing; that, although he was part owner of two ocean-going vessels, he was not a seaman himself and had never "navigated or mastered" a ship (31); that, prior to the operations in connection with the *Nippon*, he had never engaged in wrecking or salving, and that in the prosecution of those operations he had no associates (32)—of course with the exception of his emplouees. It was admitted also that his firm had no salvage apparatus of its own (Erlanger, 32). Some of the apparatus that was used belonged to the Bureau of Navigation, some to the Atlantic, Gulf and

Pacific Company, and some they bought for the occasion (Reis, 46).

When asked whether he had been solicited to engage in the enterprise or whether it was voluntary on his part and an enterprise of his own, Erlanger answered that it was, "most decidedly" (34, 35). His lack of knowledge of such work, however, and his utter incompetence to engage in it at the time is perhaps more conclusively indicated by an admission he made in his testimony to the effect that, had it not been for the protests of the insurers of the cargo he would have made no attempt to save even that part of the cargo which the event proved could be saved but would simply have thrown it overboard and devoted his whole attention to saving the ship. This appears on page 42 of the Record. He was asked:

> "*Q.* Did or did not the opposition and interference by the owners and underwriters of the cargo and their legal representatives have any effect upon the facility with which the salvage operations were carried on?

And answered:

> "*A.* They had a great deal of effect for the simple reason that *had we followed out the plan we had outlined, to jettison all the cargo, we would have probably been able to save the ship earlier than we did, but, due to their insistent demands and attacks, we did our best to get as much cargo as we could.*"

Tested by experience, his Manager, Mr. Reis, appears to have been little, if any, more competent—that is, as a wrecker or salvor. He had been in charge of plaintiffs' shipping department for nearly two years, attending to such duties as "seeing to the landing and loading of passengers and freight," "the despatching of vessels" and "the forwarding of passengers and cargo," and, for two

years just before his employment by plaintiffs, had been Assistant Director of Navigation (43, 44).

In that connection his duties had been, not those of a wrecker or stevedore, but such as were incident to "the supervision of the construction of port works, the construction of a pair of vessels" (what kind is not stated), "the issue and supply of property, the supervision and discipline of the entire force of the Bureau of Navigation —in fact, all duties devolving upon the Director of that Bureau" (44).

He did not profess to be a wrecker or even a stevedore; he was not "a sailing man" (62); he "stayed ashore in the office and gave directions from there" (63). The only time he mentions having seen the *Nippon* before she was floated and brought in from the reef was in Manila Bay before she left on the trip that was to result in her being overtaken by the typhoon of the 8th of May and stranded (59). He admitted that he "did not see her while on the reef" (49).

Captain Ben Taylor, the first of plaintiffs' employees to be placed in charge on board the stranded steamship, did, it is true, profess to be a "stevedore and experienced wrecker" (75). He was said by Reis to have been "one of the best known stevedores and wreckers in the East" and to have had the "largest stevedoring business in Iloilo for a number of years" (61). He had been Captain of a launch. Just prior to his employment by plaintiffs he was Chief Stevedore of the Bureau of Navigation (65) —according to Reis. Taylor himself testified that his experience covered 14 years (76); that formerly he had done salvage work in Puget Sound and Japan; that he helped raise a vessel at Cape Flattery, and that in January, 1912, he floated the *Mindoro* off Animosa Reef (91).

But, for all his experience, he was not so much as relied on by plaintiffs to order what was needed for the salvage work on the *Nippon*. "What stuff we would want," he explained in his testimony, "Mr Reis knows just as well as I do" (92) and it appears that *he was superseded by Captain Anderson as manager on board the stranded ship in less than two weeks*. (The operations began on the 18th of May and Captain Anderson "quit the Government" and took charge on the 27th of that month, 61, 63, 95.) In this connection, Captain Taylor seems to have been somewhat lacking, among other things, in executive ability, for Captain Anderson testified that when he took charge *nothing much had been done* (95).

"It was rather discouraging," Captain Anderson said. "The people couldn't work or wouldn't work in the holds" (95). The reason for this he attributed to certain effects on them of the gases and acids caused by the decomposition of the wet copra,—though Taylor himself indicated the possibility of another at least equally demoralizing influence when, in answer to a question as to what inducements he offered to keep the men on the ship, he said (82):

> "All kinds of inducements—anything I had on the ship. *I gave them five meals a day. They had the ship's stores to take anything they wanted. They had all my stores—anything they wanted. I even gave them wine to drink.* We were offering anything we had to keep them out there."

Some further light is thrown on the subject by the defendant's witness Charles Brown, who was one of plaintiffs' employees on the stranded ship for 58 days (166) after Captain Anderson had superseded Taylor. Brown was asked: "What was Ben Taylor doing there?"

"Nothing," he answered, "except sitting down and looking wise. A muchacho, that is what Captain Anderson told me. 'He is only a muchacho here' " (161). In the Philippines the word "muchacho" (boy) is used in the same sense as in this country the word "hand" or "man" is used when referring, not to a superintendent but to an ordinary member of a working force. If such was Taylor's only value after he was superseded, it would seem that he could not have been of any great use while in charge.

Captain Anderson, the man who succeeded Taylor in charge on the stranded ship, was only 35 years old and had been a master mariner, and in Philippines waters, about 8 years (92, 101). He was not shown to have had a particle of previous experience either as a wrecker or as a stevedore. When asked why he was put in charge of the work, the only reason he himself could give is indicated by his answer (101): "Well, I don't know. *I guess because I have some get up and go about me.*"

And this is the man—the same George Anderson who was Captain of the Government coast guard cutter *Mindoro* at the time of her first trips out to the stranded steamship—to whom Director of Navigation Helm was referring when, in response to the request of Messrs. Struckman & Company for information as to the possibility of salvage, he wrote those gentlemen on the 16th of May:

> "I have not seen the Captain and have had no written report from him, but, when he arrives to-day, I will have him make out a written report on the condition of the ship as he found her, although it is not his business to make such report, as *he is not a surveyor and not competent to say whether it is possible to salve the ship or not, and, personally, I would not place any reliance on the recommendation of a*

*person not familiar with wrecking vessels or with the salvage business. * * * As I have said before, I could place no reliance whatever on recommendations as to the salving of the vessel in a written report of the Captain and officers of the Mindoro, as they are not competent to pass on this sort of work.*"

The persons, therefore, who had the general direction of affairs were Mr. Simon Erlanger himself, a merchant and importer, who had never had anything to do with the work of wrecking, Mr. Reis, the manager of a shipping department of a mercantile concern, who was equally inexperienced and never even as much as went near the stranded steamship but issued orders from his office on shore; and those who were in charge on board the ship were, first, Captain Taylor, a stevedore and self-professed wrecker, but who was so incompetent that he had to be deposed by plaintiffs themselves in less than two weeks, and Captain Anderson, a master mariner, who is not shown to have had any more experience as a wrecker or even as a stevedore than his employers, and whom his former chief did not regard as competent even to give an opinion that would be worth anything as to the mere possibility of salving the ship or her cargo. Plaintiffs thought he had some "get up and go" about him. In that respect he may have been the superior of Captain Taylor.

The other persons named by Mr. Erlanger and Mr. Reis (other than the Filipino laborers, of course) as having been employed on board the stranded ship, were Messrs. Ruttledge, Flor, Heber, Handysides, Hilgrove, Helvering, Johnson and Brown (33, 49, 62). Ruttledge and Flor were marine engineers who operated the pumps (62, 86, 102). Johnson was a diver (62). Brown was an illiterate sailor who professed, however, to have had some

experience in connection with salvage operations (160, 163). He was never placed in charge and it does not appear that he was ever called on for advice. What part Messrs. Helvering, Hilgrove, Heber and Handysides took in the work, or even in what capacity they were there, was not shown. Plaintiffs did not produce them as witnesses, nor did they call Johnson or Flor. Brown, as already stated, was a witness, but was called by the defendant.

The services of competent salvors could have been secured.

Though, in his ignorance of local resources, Captain Eggert of the stranded vessel may not have been aware of it when he set out for Hongkong to arrange for the rescue of his ship, there is no reason why plaintiffs should not have known, or could not easily have ascertained, that competent help was available right there in Manila.

Captain Lebreton, a marine surveyor and stevedore who had been in the Orient since 1863—for 35 years in the customs service in China and in Manila four or five years—was asked (180): "Are there people in Manila, Captain, who, as part of their business, salve ships and cargos?" "Certainly there are," he answered, "right here." "Who are they?" he was asked next. "Captain Hessel, for example," he said, "and Captain Robinson for many years has been in the salvage business."

This witness further testified that he was in the employ of the C. S. Robinson Tug & Lighter Company (179, 182), the firm of which the Captain Robinson just referred to was an officer, and, in answer to the following questions, the witness said (180):

"*Q.* Do you know what implements Captain Robinson has that would have been suitable for the purpose of taking that cargo out of the *Nippon?*

"*A.* We had several pumps and grabs and everything ready to take out, and scows. We have our own scows.

"*Q.* How many?

"*A.* Sixteen.

"*Q.* And how many pumps and grabs?

"*A.* When I say 'our own scows' I mean they belong to the Company. Grabs—they were to be had. We had them prepared and all the gear ready.

"*Q. Had you been making preparations for taking off the cargo?*

"*A. We were prepared to go out at a moment's notice.*"

* * * * * * *

These preparations were in accordance with arrangements made with them by Struckman and Company, as agents of the insurers of the copra. Later, with reference to conditions in Hongkong, the witness was asked and answered:

"*Q.* Do you know anything about the means and kind of labor to be obtained in Hongkong, China, for the purpose of salving vessels?

"*A.* Ordinary labor.

"*Q.* Everything necessary to take off cargo from vessels?

"*A.* Yes, sir; plenty of it.

"*Q.* And how does the labor obtainable in Hongkong for such purposes compare with the labor to be obtained here in the Philippine Islands?

"*A.* I should say that one Chinaman was worth three Filipinos.

* * * * * * *

(On cross-examination:)

"*A.* In Hongkong they have gear and are always prepared to do that sort of work.

"*Q.* You are satisfied from your own knowledge and observation that such a salvage operation from Hongkong could be gotten under way in a couple of days?

"*A.* Yes, sir. * * * The men could be brought from Hongkong, and the pumps and gear, and landed on the *Nippon*. You could very easily get a boat from Hongkong to bring the men. There are many boats sailing from Hongkong to Manila and it would be easy to bring the men over, and lighters or even coast guard steamers could be chartered to take delivery of the cargo.

"*Q.* Then you would not have gotten your steamers and lighters from Hongkong?

"*A.* No; it would not have been necessary."

A reading in full of the testimony of this witness will show that what the attorney for the defendant was pointing out by him was that, although Captain Eggert of the stranded steamship may have believed when he set out on the *Manchuria* for Hongkong, and although he may have been mistaken in the belief, that Hongkong was the nearest port at which he could obtain the proper facilities for saving his vessel and her cargo, he was *not* mistaken in thinking that they *could* be obtained in Hongkong, though, if only he had known it, he might also have obtained them in Manila.

Another of the defendant's witnesses, Captain Bailey, had been in Manila two years and eight months and had been "running out East for sixteen years." (190). At the time of the stranding of the *Nippon* he was "stevedoring with Robinson & Company" (*Id.*). He testified in answer to the following questions as follows (191):

"*Q.* Were you ready and willing on the 14th and 15th of May last to take the salvage of the *Nippon* and cargo?

"*A.* Yes. Not myself—Captain Hessel and I under the name of Hessel & Bailey.

"*Q.* Did you have the implements necessary for that purpose?

"*A.* Yes, sir; we had. They are not our own but we had them spoken for—the necessary pumps we wanted.

"*Q.* Do you know anything about China?

"*A.* Yes, sir.

"*Q.* Hongkong?

"*A.* Yes; all of the China coast.

"*Q.* What are the means to be obtained in Hongkong for the salvage of vessels?

"*A.* There are three salvage boats in Hongkong and one regular salvage company—one at Kowloon dock and one at Tycoo dock.

"*Q.* Are they large steamers?

"*A.* One is a large ocean-going steamer; the others just tug boats.

"*Q.* What do you know about the labor market in China for work of this kind?

"*A.* Lots of labor to be had there.

"*Q.* How does that labor compare with labor to be had in Manila?

"*A.* Much better than Manila.

"*Q.* Is it to be had in large numbers in Hongkong?

"*A.* As many as ever you want.

* * * * * * *

(On cross-examination.)

"*Q.* Are there wrecking companies there" (in Hongkong) "that have regular equipment always on hand?

"*A.* Yes; there is a Swedish or Danish company, but at this time the vessel was up in the Red Sea.

"*Q.* Is there any other company?

"*A.* The Kowloon has one and the Tycoo has another.

"*Q.* How long would it take to get them ready?

"*A.* They are always ready; they use them around Hongkong.

"*Q.* Could they get them out in 24 hours?

"*A.* No; two days, I should say.

"*Q.* They would not have the space on board to take all the laborers you would need, would they?—so that you would need another vessel?

"*A.* I think the Kowloon dock tug would take all the men."

Captain Charles S. Robinson, who had been in the stevedoring and salving business for 34 years, testified to the same effect (198, 199, 201).

And with respect to this, as with respect to all the other testimony submitted by the defendant, not a single witness was called in rebuttal. Aside from some futile attempts made on cross-examination to discredit statements of the witnesses or to cause the witnesses to qualify what they said, no attempt whatever, even by anticipation in the testimony for plaintiffs, was made to contradict them.

The loss attributed to plaintiffs, seizure of the stranded vessel and cargo and to the conduct of their salvage operations.

The amount of copra on board the *Nippon* at the time of her misadventure was 1,842.28 tons (11, 172), or (calculated on the basis of the American and British shipping ton of 2,240 pounds) 29,592 piculs, which is the unit referred to in the evidence. (A picul, according to the Standard Dictionary, is 139.45 pounds.) The plaintiffs' Manager, Mr. Reis, testified that the normal price of copra per picul in the Manila market was 14 or 15 pesos (57). Estimated at only the lower figure, the value of the copra that formed the bulk of the *Nippon's* cargo, therefore, was ₱404,298.36—that is to say, ₱4,298.36

more than the estimate of its value that is given in the answer and counterclaim of its owners, the Oelwerke Teutonia (11).

Of the 1,842.28 tons of copra that were on board the stranded steamer at the time of the misadventure Mr. Reis admitted that toward the end of the operations approximately 350 were jettisoned. The number must have been considerably greater, however, for it appears from a certificate of the Surveyor of the Port (140, 141) that the copra brought in from the *Nippon* at various times from May 20 to July 3rd amounted in the aggregate to 1,316,102 kilos or 1,292.60 tons.

The Supreme Court of the Islands found it to be 1,317 tons (24.40 tons more than the 1,292.60 accounted for by the Surveyor) but the Collector of Customs would seem to have explained this discrepancy by the statement in his testimony that a small amount of the copra was brought in on a launch in August (68), some time later than the last date in the Surveyor's report.

Computing it at the Court's figure, therefore, the number of tons jettisoned must have been 525.28 instead of 350, as stated by Mr. Reis. The number of piculs in 525.28 tons (calculated on the same basis as above) is 8,437.62. At ₱14 per picul, the value of the jettisoned copra at the time of the stranding of the ship was ₱118,-126.68. This figure also is very close to that at which the loss on this account is estimated in the defendant's counterclaim (14). At ₱14 per picul the value of the 1,317 tons or 21,155.12 of saved copra was ₱286,171.68 at the time of the stranding of the ship, yet it appears that the net proceeds of the sales of this saved copra amounted in the aggregate to but ₱142,657.06 (217), and that there was consequently a loss to the defendant in connection

with the saved copra of ₱143,514.62, or (adding the value of the jettisoned copra) a total loss to the defendant of ₱261,641.30.

In its counterclaim, however, the defendant has not asked for so large an amount, for allowance is made for some deterioration due to the effect of submergence in the water in the ship's hold. The defendant's contention is that, but for the plaintiffs' negligence and lack of skill and diligence, all the copra could have been saved in good marketable condition by the first of June; that if it had been saved even by the 5th of June, its value would have been as much as ₱324,169.00. The defendant then estimates the total loss at ₱175,432.00, including the value of the jettisoned copra, and prays judgment for that amount together with the ₱142,675.06 constituting the net proceeds of the sales of the copra.

The Court of First Instance gave judgment for but 50 per cent of the ₱142,675.06 realized from the sales. This the Supreme Court of the Islands, by reducing the percentage of the allowance to plaintiffs from 50 to 40, increased to ₱85,594.24, making the judgment in favor of the defendant, the Oelwerke Teutonia, for that amount instead of the ₱71,328.53 awarded by the trial court.

ARGUMENT.

The Supreme Court of the Philippines based its decision that plaintiffs were salvors of the cargo, and, as such, entitled to a share of the value of the part of it that was saved, on the theory that, at the time plaintiffs took possession, the vessel in question was a derelict, or at least a quasi-derelict, and that, therefore, both vessel and cargo were proper subjects for salvage.

Bouvier defines salvage (2 Bouvier's Law Dictionary, Rawle's Revision, p. 948) to be "a compensation given by the maritime law for service rendered in saving property or rescuing it from *impending peril* on the sea or wrecked on the coast of the sea" (citing 1 Sumn. 210, 416; 12 How. 466; 1 Blatch. 420; 5 McLean, 359). "In order to found a title to salvage, the peril from which the property is saved must be *real*, not speculative merely" (citing 1 Cra. 1; 1 Ben. Adm. 166), "though it need not be such that escape from it by any other means than by the aid of the salvors is impossible. It is sufficient that the peril is *something extraordinary, something differing in kind and degree from the ordinary perils of navigation*" (citing 1 Curt C. C. App. 353; 2 *id.* 350; 9 C. C. App. 292; 40 Fed. Rep. 909; 41 *id.* 103). "*But the peril must be present and impending, not future, contingent and conjectural.*" * * *

"Salvage," the Court below says (223), citing Blackwell *v.* Sancelito Tug Company (10 Wall., 1), "is the compensation allowed to persons by whose assistance a ship or her cargo has been saved, in whole or in part, from impending peril on the sea or on recovering such property from actual loss, as in case of shipwreck, derelict or recapture."

"The relief of property from an impending peril at sea by the voluntary exertions of those who are under no legal obligation to render assistance, and the consequent ultimate safety of the property, constitute a case of salvage. It may be a case of more or less merit, according to the degree of peril in which the property was and the danger and difficulty of relieving it, but these circumstances effect the degree of the service and not its nature" (Citing Williamson *v.* The Alphonso, 30 Fed. Cas. 4, 5).

"A derelict is defined as a ship or her cargo which is abandoned and deserted at sea by those who were in charge of it," the Court went on to say, "without any hope of recovering it or without any intention of returning to it," citing Abbott's Law of Merchant Ships and Seamen (14th Ed., 994). "Whether property is to be adjudged derelict is determined by ascertaining what was the intention and expectation of those in charge of it when they quitted it. If those in charge left with the intention of returning or of procuring assistance, the property is not derelict. Such intention (in the case at bar), if it existed, "does not appear to have been very firmly fixed, considering the leisurely manner in which the master proceeded after he reached the port of Hongkong."

The Court then quotes from the record the evidence regarded as supporting a finding to that effect and says (229) that "from the above it will be seen that Captain Eggert had over two days in which to arrange for salvage operations and he did nothing, while the plaintiffs, who were strangers and had no interest, sent out a salvage expedition in twenty-four hours after they discovered that the ship was wrecked. The evidence proves that the *Nippon* was in peril; that the Captain left in order to protect his life and the lives of the crew; that the *animo revertendi* was slight."

In support of its view that the law, as applied to what it regards as the facts in the case at bar, entitles the plaintiffs, all the circumstances considered, to compensation for services as salvors of the part of the cargo involved in the present appeals, the Court cites a number of cases which "indicate," it concludes (232), "that the abandonment of a vessel by all on board, when the vessel is in peril, will justify third parties taking possession with the bona fide intention of saving the vessel and its cargo for

its owners." It will be noted, however, that in every one of these cases the element of *impending* peril is persent.

It is clear, therefore, that the Court below, as grounds for its opinion, holds these things to have been established in the case, viz.:

1. That, at the time of the taking possession thereof by plaintiffs, the vessel and cargo were in peril.

2. That there was impending danger that she would be lost or become a total wreck.

3. That she had been abandoned by her officers and crew with but slight hope or intention on the captain's part to return and make an attempt to save her or to cause such an attempt to be made.

4. That, as a consequence, plaintiffs had a lawful right to take possession of both vessel and cargo for the purposes of salvage, and

5. That, in the circumstances, they had the right to retain possession for that purpose notwithstanding the demands and protests hereinbefore referred to.

It is respectfully submitted that the evidence justifies no such findings of fact.

The *Nippon* was not "found at sea" by the plaintiffs or anyone else. She was not floating helplessly about in a storm, deserted by her officers and crew and in imminent danger of foundering or drifting away and becoming lost. On the contrary, she was hard and fast on a reef, all but one of the officers and all but nine of the crew were on board throughout the typhoon, and, instead of waiting for the ship to be found, the captain had sent the Chief Officer and the nine members of the crew above mentioned ashore in a small boat for help. The *Nippon* was stranded on the 8th of May; the *Manchuria*, which was the first of the rescuing steamers to go to her relief, did not reach

the scene of the misadventure until the 13th. (See Statement of Facts in this brief, pp. 15, 18.)

At the time of the arrival of the *Manchuria*, the storm was over, "*the weather was fine*" (Eggert, R., p. 147), and the stranded vessel was so firmly held on the reef that she could not be floated off until her cargo was taken out and the high tides had come which every year occur in that vicinity in the latter part of June and early in July. (See testimony of the plaintiffs' witnesses Taylor and Ruttledge set forth in the Statement of Facts in this brief, pp. 38, 39.) When the salvage operation of the plaintiffs were begun five days later (the 18th), the weather was still good; no other typhoon or serious storm occurred during their continuance, nor was it likely that any would occur. (*Id.*, pp. 36, 37.)

Captain Eggert testified that he left the stranded vessel on the *Manchuria* (the mail steamer that was bound for Hongkong) instead of on the Philippine coast guard cutter *Mindoro* because, although he had never been to Manila before the voyage on the return from which he encountered the typhoon of the 8th of May, he *had* been to Hongkong before and knew that he could obtain everything there that he needed to help him save his ship. He "knew all of the salvage working having been done from Hongkong and knew the means they had —salvage steamers, pumps, gear, etc." (R., p. 143.)

Adequate facilities might also have been obtained by him in Manila, but this he did not know *Id.*,. 143), and, if he believed, as he said he did, that they could be obtained in Hongkong but could not have been obtained in Manila, that of course is the fact that must be regarded as the material and controlling one in considering his motive in connection with the point made by the Court below.

His intention to return and make an attempt to save the stranded vessel he made known to all with whom he came in contact at the time. "I left the *Nippon* with full intention of returning to the ship and trying to recover her," he testified (154), "and I discussed that matter during the three days we were on the reef with every member I could see in the crew and with the passenger. Everybody knew as soon as I put my foot on the *Manchuria* that it was for the purpose of getting assistance. Captain Dixon" (of the *Manchuria*) "knew, his officers knew it and his crew knew it."

He arrived in Hongkong about five o'clock in the afternoon of the 14th (143), called on the agents of the owners of the stranded vessel in that city and the same evening telegraphed the owners themselves at Gothenburg that he was "arranging to visit wreck and attempt salvage" (155). And not one word of all this was contradicted in the evidence. The plaintiffs did not call Captain Dixon of the *Manchuria* or any of his officers or crew, any of the officers or crew of the *Nippon* or any one else who could possibly have been in a position to contradict it. On the contrary, Captain Eggert was corroborated in that and many other respects by Mr. Gohde, the chief engineer of the stranded ship (156 *et seq.*), as already shown in this brief.

It is true that this intention of Captain Eggert's may not have been in terms communicated to the plaintiffs before their operations were begun. The *Manchuria* was the first of the rescuing steamers to arrive at the scene of the misadventure, and, when the coast guard cutter *Mindoro* came up, Captain Eggert was already on board the *Manchuria*, and that vessel had already gotten under way full speed for Hongkong (148). He admitted that

he had no communication with the *Mindoro* whatever (143) and in his testimony made no claim to the effect that in the conversation on the 13th between the Captains of the *Manchuria* and *Mindoro* at the scene of the misadventure the Captain of the former vessel informed the Captain of the other that he was going to Hongkong expressly for the purpose of obtaining help to save the stranded ship.

The Captain of the *Manchuria* did inform Captain Anderson of the *Mindoro*, however, of the fact that Captain Eggert was on board and on his way to Hongkong. (Eggert, 148; Anderson, 93.) This the Captain of the *Manchuria* also reported on the 13th by radiogram to Manila (19). It would, therefore, have been possible for the plaintiffs, before taking even their first step, and before any step was taken by anybody with a view to salvage operations, to have ascertained from Captain Eggert, or at least from the agents of the owners in Manila, whether their services were desired.

This, counsel for the defendant respectfully contend, was a prequisite to their right to begin their salvage operations, in the circumstances that existed in the case at bar, because *in this case there was no emergency that made immediate action on the part of the plaintiffs necessary.* The *Nippon*, as we have said above, was not drifting helplessly about and likely to be lost for that reason; her her location was fixed and well known. She was in no imminent peril; the typhoon that had caused the disaster was over; she was hard and fast on the reef and the weather had turned "fine." There was no likelihood that there would be any more bad weather for a long time to come.

And all these facts must have been known to the plaintiffs before their operations were begun, for both Mr. Erlanger (a member of plaintiff's firm) and Mr. Reis, their manager, and who had charge of the salvage operations, admitted that on the 14th of May, the day following the first reports of the misadventure, they chartered the *Mindoro* to go out to the reef—and incidentally it should be noted *not*, as stated by the Court below, on a salvage expedition but—"to discover if the abandoned wreck was above water or not" as Mr. Erlanger put it (32), and as Mr. Reis testified, to find out "what she was loaded with and how she was loaded" (60).

It was admitted in the testimony for plaintiffs that no offer of their services was made either to the agents of the owners of the stranded ship or her cargo or to Captain Eggert (Erlanger, 35). In this connection Manager Reis testified (60):

> "*Q.* My question is whether you made any efforts to find out who were the parties, if any, here in Manila who were interested in the ship or her cargo, or the representatives of the parties interested in the ship or her cargo?
>
> "*A.* No, sir.
>
> "*Q.* You made no efforts in that direction?
>
> "*A.* No, sir.
>
> "*Q.* You say that the newspapers of May 13th printed a wireless telegram from the *Manchuria* regarding the condition of the *Nippon?*
>
> "*A.* I said the afternoon paper printed a purported telegram from the *Manchuria*, a wireless.
>
> "*Q.* Did you try to communicate with Captain Eggert, the master of the *Nippon?*
>
> "*A.* No, sir.
>
> "*Q.* You are aware of the fact, are you not, that you could have communicated with Captain Eggert by wireless?
>
> "*A.* No; I am not aware of it.

"*Q.* You knew that he was on board the *Manchuria*, did you not?

"*A.* Yes, sir.

"*Q.* And the *Manchuria* telegraphed to Manila, didn't she?

"*A.* Yes, sir.

"*Q.* I suppose then Manila could have telegraphed to the *Manchuria*, couldn't she?

"*A.* There is no commercial wireless in Manila that I know of.

"*Q.* But the wireless station here does send messages to vessels, does it not?

"*A.* They will in regard to the arrival and departture of vessels but I do not know as they will accept any commercial telegrams.

"*Q.* Do you consider it for commercial purposes to wire to the Captain of a wrecked vessel what he intends to do in connection with such vessel?

"*A.* I did not endeavor to do it."

At all events, he could have *cabled* Hongkong after Captain Eggert had reached that port (the 14th of May) and plaintiffs would still have been in ample time to save themselves any expense in the matter on receipt of a reply unfavorable to their plan.

But, although the evidence in the case at bar as to the intention of Captain Eggert not to abandon the stranded ship in the legal sense of the word (that is, not permanently) but to return and attempt to save it was not contradicted by the plaintiffs, the Court below says (224) that "such intention, if it existed, does not appear to have been very firmly fixed, considering the leisurely manner in which the master proceeded after he reached the port of Hongkong," and adds in this connection that (229) "the evidence proves that the Captain left in order to protect his life and the lives of the crew; that the *animo revertendi* was slight."

What is the evidence in this regard? During the course of the typhoon they had had a terrible experience. The ship had been cast on a coral shoal, which at high tide was almost completely submerged (Taylor, 86, 87), and they had remained on board from the afternoon of the 8th of May, when the vessel was stranded, until the morning of the 13th, when the *Manchuria* came to take them off (Eggert, 142). The first night there was a "very bad sea and high wind. The ship was thrown up all the time on the reef and bumping. Seas were washing right over all the time. The next morning was also bad," though "a little better" (*Id.*, 146–7).

The third and fourth day, said Captain Eggert (147), "the weather was fine," but the heavy seas must have continued, for plaintiffs' witness Taylor testified (80) that although the "sea was comparatively smooth" when he got out there to take possession of the vessel for the plaintiffs (two days after Captain Eggert left on the *Manchuria* for Hongkong), "there was a pretty big swell on and she was rolling pretty bad that first night. * * * You could hear her grinding all the time where she was resting on the rocks."

Aside from this, the officers and crew of the stranded vessel "didn't know the weather in the China Sea." They "could have expected another typhoon in a couple of days and very likely the ship would have gone into the sea"(Gohde, 158). The vessel was half full of water (*Id.*). They did not know at the time that she was pinioned by the rocks and held as securely on the reef as the plaintiffs' witnesses Taylor and Ruttledge described in their testimony (supra). Moreover, during the four days prior to the arrival of the *Manchuria* they had been without means of escape.

The only small boat that remained after the chief officer and nine members of the crew had been sent out in the only seaworthy one for help was broken (Eggert, 147), "so badly broken" that when part of the crew had rowed out in it to the *Manchuria* it was considered of "no use" and "left adrift" (*Id.*, 148). The scene of the misadventure was out of the track of commerce (*Id.*, 147). The crew believed their lives to be in danger and had been insisting on leaving the ship by building rafts or in some way (*Id.*). Prior to the arrival of the *Manchuria* it was not known that the party sent for help had reached shore and arranged for a rescue (*Id.*).

Such was the condition of affairs at the time Captain Eggert went aboard the *Manchuria*. It is true that because of it he took all the crew with him that had not already gone ashore with the chief officer. When asked while testifying in the case why, if his purpose in going to Hongkong was to arrange for the salvage of the ship, he did not leave some of the crew on board, he said: "How could I leave some of the crew on board when there was no attendants? There could be a gale at any time and the ship would have slipped off and broken to pieces. I first of all was responsible for their lives" (151). Later in the same deposition he added that one's hope of saving a ship "will never justify" the "risk of another man's life" even when there is "a very good foundation for your hope. Life comes before property" (154).

The fact, therefore, that having believed such a course to be unwarranted in the circumstances, he did not leave on the stranded ship any of his crew to guard her would appear to have no weight as evidence tending to prove the assertion that his intention to return and his hope with respect to salvage were only slight.

And it is the same with respect to the consideration stated by the Court below regarding the inference to be drawn from what the Court characterizes as his "leisurely" procedure after reaching Hongkong. According to his uncontradicted testimony, when he arrived in Hongkong, which was about 5 o'clock in the afternoon of the 14th of May (143), he went straight to the office of the agents of the owners of the stranded ship, and, finding the office closed, "proceeded to the private residence of the manager," from whence he "despatched a telegram to the owners" themselves (*Id.*), informing them of the misadventure and stating that he was "arranging to visit wreck and attempt salvage" (155).

"The first thing on the morning of the 15th," he continued in his testimony. "I visited, together with the Swedish consul, the Tycoo Dockyard people, the Hongkong Dockyard people and went to the Mitsui Bussan Kaisha branch office and those people sent a wire to their home office in Nagasaki" (143). "What, if anything," he was asked, "interrupted your negotiations with the firms and persons in Hongkong relative to the salvage of the *Nippon* and her cargo?" To this he replied (144): "A wire from my owners." That wire was received by him on the 17th (144).

It read (omitting here the preliminary part containing directions as to the code by which it was to be translated):

"All telegrams referring to this steamer" (the *Nippon*) "are intended for and must be forwarded to Eggert without further notice. Please communicate the contents of this telegram to the person named for which it is intended. *We are informed that vessel has been seized as a prize by Government. Underwriters have requested Lloyds' agents Manila to protect our interests and their*

interests. Consult Lloyds' agents. Telegraph what you you can do. Look after our interests. Report upon salvage prospects. If not total loss let crew remain until further notice. If total loss obtain certificate. Telegraph as soon as possible full particulars." (155, 156.)

Now, it is respectfully urged that there is no indication of any too leisurely procedure in the above. It appears from the testimony of a witness other than Captain Eggert—Captain Bailey, a master mariner and stevedore, who had been living in the East nearly three years and had been "running out East for sixteen years" (190)—that there were salvage concerns in Hongkong at the Kowloon and Tycoo docks, one (a Swedish or Danish concern) with a large ocean-going steamer and others with tug boats (191), and Captain Eggert says that, during the two days between his arrival in Hongkong and the receipt of the telegram from Gothenberg that interrupted his efforts to obtain help with a view to salvage, he was negotiating not only with the "dock yard people," but with a branch of a concern that had its home office in Nagasaki (143).

There is nothing to show that, but for the interruption referred to, those negotiations might not have been concluded with one or another of the concerns and an expedition sent out to the reef in a day or two. Notwithstanding what is said by the Court below, the record does not show that the plaintiffs themselves were any more expeditious in making their arrangements. It was on the 13th of May that they learned of the misadventure through the publication in a daily newspaper of Chief Officer Westin's telegram (Reis, 44; Erlanger, 32, 35). Taylor, it is true, was sent out to the stranded ship to take possession in their behalf on the 14th, but he had

with him only four men and no other equipment than a lifeboat. He was not instructed to begin work at the time (78, 90). He testified most positively that "the stevedoring equipment and supplies, sacks, baskets, shovels," etc., and the first batch of men to be used in the salvage work did not arrive until the 18th (78).

Five days, therefore, elapsed between the time the plaintiffs learned of the misadventure and the time the operations were begun, though the distance Manila and the scene of the misadventure could be covered in twenty-four hours by steamers of the sort they employed (Reis, 52). In other words, no salvage, expedition was sent out by plaintiffs within two days after they heard of the misadventure, as stated by the Court below, but it *is* true that only two elapsed between the time Captain Eggert began his negotiations in Hongkong and the receipt of the telegram that brought them to an end. It results, as it seems to counsel for the defendant, from what appears in evidence that Captain Eggert can not fairly be said to have been dilatory and that it can not properly be inferred from his procedure in the matter that his hope of saving the ship or intention to cause an attempt to be made to save it was only slight.

So far as the breaking off of the negotions in Hongkong is concerned, there was good reason for the owners to believe that the stranded ship had been seized by the Philippine Government and to order Captain Eggert to proceed to Manila to consult Lloyds' agents there and do whatever was necessary to protect their interests. They had been informed that the ship had been seized by the Government. A Government coast guard cutter (the *Mindoro*) had been sent out to the reef on the 12th, the day Chief Officer Westin reported the disaster on his

arrival in the small boat in Santa Cruz. In the 14th, the same Government steamer had made a second trip out to the stranded ship and had left on board the latter Captain Taylor, a man who until that very day, or at least very recently, had been an employee of the Philippine Bureau of Navigation (61, 76), and on the stranded vessel Taylor had hoisted the American flag (32).

With respect to his procedure in the matter, Captain Eggert further testified (144) that after receiving the above mentioned telegram from the owners of the stranded ship, he took the first steamer that left Hongkong for Manila (on the 20th) and proceeded to that city; that immediately on arriving in Manila, he went to Messrs. Kerr and Company, who had been appointed to look after the ship's interests, then went to the Swedish Consul; that the same day he tried to charter a steamer to go out to the reef but could not get one until the 24th, when he succeeded in chartering the *Basilan;* that he then proceeded to the stranded ship, taking with him "the people that were going to testify to the state of the ship, possibility of salvage, etc.," and that possession was refused by Captain Taylor, the man plaintiffs had placed in charge.

But after all, why should the Court below have laid so much stress on the testimony of Captain Eggert respecting his procedure in Hongkong? Let it be assumed, but merely for the sake of argument, that he did proceed in a "leisurely manner," as the Court puts it, after his arrival in Hongkong, and assume for the sake of argument that his way of going about it conclusively proves that his hope of saving the stranded ship and his intention to cause any attempt to be made in that direction were only slight; that, therefore, the ship and cargo must be regarded as having been abandoned and left derelict by him and the rest of the ship's company.

How is this material in view of the conditions and circumstances that existed in the case at bar? For whatever bearing Captain Eggert's procedure, if leisurely, may have on the question as to whether the ship itself was abandoned and left derelict and whether, as a consequence it was properly a subject for salvage by the first comer, it is certain from the evidence in the case that that part of the cargo which consisted of copra was not abandoned by its owners and their insurers, and that, therefore, the copra was not a proper subject for salvage by the plaintiffs.

From the uncontradicted evidence (referred to in detail in the Statement of Facts in this brief, pp. 24, *et seq.*), it has been conclusively established in this case that Messrs. Struckman & Company, the agents in Manila of the owners and insurers of the copra, lost no time either in making this known or in themselves arranging to save the copra.

Early in the morning of the 14th of May, the day plaintiffs sent Taylor out to the reef to take possession of the stranded ship in their behalf, Messrs. Struckman & Company received a cablegram from the underwriters of the copra notifying them to "look after their interests. They were not aware until then that their principals had any interest in the cargo of the *Nippon* to protect (211). But as soon as they were, in that way, apprised of the situation, they took the steps already detailed in this brief in the Statement of Facts (supra, pp. 25–32.)

And, aside from all this, there is a principle that applies in such a situation as the one now under consideration which, as it appears to counsel for the defendant, is conclusive as to the lack of right in the plaintiffs to compensation for their alleged services with respect to the salvage

of the property of the defendant in the present case. That principle is as indicated by the court as follows in the case of the Henry Steers, Jr. (110 Fed. Rep., pp. 578, 582, 588):

> "A person without knowledge of navigation might not be justified in undertaking the salvage of a ship, where nautical skill was required, *if other persons with the adequate skill were at hand.* It was for this reason that in the Dryden, 1 Notes of Cases, 116, Dr. Lushington refused salvage award to fishermen who undertook to handle a ship in distress, and, as found by the Trinity Masters, took erroneous steps from the beginning to the end. It must be noticed that *the fishermen put themselves forward to extricate a ship from a critical peril, where a knowledge of seamanship not possessed by them was demanded and there were others ready to render the needed aid who had the proper skill and resources.* In the opinion it was said:
>
> "'When persons offer their services to vessels in distress and there are no other individuals on the spot capable of rendering more efficient assistance, this court must look with considerable indulgence at their efforts because, being the only aid that can be procured, and offered in a state of great exigency, every allowance must be made if they are not possessed of adequate knowledge to perform the duty they had undertaken. *But different considerations will apply to the conduct of individuals who assume the character of saviors when there are persons competent to discharge those duties.*' While *a salvor should exercise the skill and care that a man of ordinary prudence and capacity in the same business would be expected to use,* yet in case of necessity a person of ordinary nautical skill may undertake a rescue on the sea, *not assuming knowledge that he does not have,* but using in good faith such abilities as he possesses.''

In the case at bar it is clear from the unimpeached, even undisputed, evidence submitted by the plaintiffs themselves that the plaintiffs engaged in the undertaking in question as a mere business venture in the hope of earning a profit; that they themselves and their manager were possessed of no experience or skill whatever in services of that character, and, therefore, *could* not have used the same "skill that men of ordinary prudence and capacity in the same business would be expected to use," and that they employed no one who was competent to render such services adequately.

It is also clear that their services were not requested; that it was known to them—at least so far as the salvage of the cargo of copra was concerned, and they could easily enough have ascertained that this was also true as to the salvage of the ship—that their services were not desired, as arrangements were in progress to secure the services of others, and that there were in fact others both in Hingkong and in the city of Manila itself who were competent and equipped for the rendering of such services and who were ready at a moment's notice to act in the particular matter here involved (180).

POINT III.

IF PLAINTIFFS WERE ENTITLED TO COMPENSATION THE COURT BELOW ERRED IN ALLOWING THEM FORTY PER CENT OF THE VALUE OF THE COPRA SAVED AND IN DISMISSING THE COUNTER CLAIM OF THE DEFENDANT.

From a statement of the surveyor of the port of Manila that was admitted in evidence in the case (R., pp. 140, 141), it appears that the copra taken by plaintiffs from the "*Nippon*" began to arrive in Manila on the 20th of May, and continued until the 3rd of July, about a month and a half after the salvage operations were begun. The Deputy Collector of Customs testified that the last lots were brought in on the 14th of July and August 8th (67, 68), and it will be remembered that, near the conclusion of the operations, a large quantity of the copra was jettisoned because the deterioration due to long submergence in the water in the hold of the ship had been so great that it was not thought to be worth while to take it to Manila for sale.

Yet witness after witness for the defendant testified that with proper equipment and competent management all the copra could have been gotten out of the ship and brought to Manila within two weeks; and not an expert was produced by plaintiffs who testified that it could not have been done in two weeks. Eggert, the captain of the stranded ship, said it could have been done within eight days (145). Gohde, chief engineer of the "*Nippon*," who had had experience in salving ships, said that "with lighters on both sides for each hold and the ship's winches and gear and steam from outlying steamers, I consider that ship could be discharged and lightened up from

the ground in one week. I could have done that myself with proper gear" (157). Charles Brown, also a man of experience and who was one of plaintiff's employees on the "*Nippon*" during the salvage operations, said "the situation of the vessel was such that she could have been off the reef in ten days' time if we had had gears. I mean if we had had wrecker's gears, boilers, pumps, anything that is included in the wrecker's business" (160).

Mr. Breckwoldt, a marine surveyor and experienced salvor, said that the cargo of the vessel could have been taken out in eight days (172, 177). Mr. Lebreton, another marine surveyor, experienced in stevedoring, said that "under conditions of fine weather, it ought to have been done in less than a fortnight; it might be done in ten days, working night and day" (180). Mr. Miller, also a marine surveyor, thought "two weeks, night and day work, would have been ample" (185). Mr. Bailey, master mariner and stevedore, testified: "With the weather they had, I reckon a fortnight ought to have cleared the cargo—all the dry cargo anyhow" (191). Captain Robinson, who was engaged in the business of stevedoring and salving in Manila, thought that he could have done the "whole job" in from 15 to 20 days, at least with respect to the "cargo that was dry and valuable" (199).

Even the trial court found as a fact that "the plaintiff entered upon the salvage proceedings without proper means" and that "they were not adapted by the business to conduct such work" (216), and this was repeated in the opinion of the Supreme Court below (232). It is true that the court added that "while it may appear that the salvage might have been conducted in a better manner and have accomplished somewhat better results in the saving of the copra cargo, yet it appears that they" (the plaintiffs) "quickly remedied their lack of means and

corrected the conduct of the work so that it accomplished fairly good results. It does not appear, that any one then or subsequently suggested or found any other course which might have been pursued and which would have brought better results'' (*id*).

How the court could have arrived at such a conclusion as that which is indicated by the last of the sentences above quoted from the opinion, counsel for the defendant cannot conceive. Another method *was* suggested by experts who testified in the case. When asked "what would have been a proper method of taking the copra out of the hold?'' Captain Breckwoldt (who had been out to the ship and made an examination of her) testified (172): "As the condition was, it would have been best to take those grabs which they discharge coal with—those big, heavy things they throw down the hold of a ship to take out coal.'' When asked on cross-examination to "state in a general way what method'' he "would have adopted to remove the cargo from the holds of the '*Nippon*'", Mr. Lebreton testified (184): "By dropping the grabs down the hatches and swinging the copra aboard steamers lying alongside.'' His testimony continued (*id.*):

> "Q. But you know as a stevedore, do you not, that when copra is stored in the hold of a vessel only a comparatively small portion of it is below the openings of the hatches?
>
> "A. Yes, sir.
>
> "Q. How would you proceed by means of clamshell buckets to remove that part of the copra which is not in the wake of the hatches?
>
> "A. The water in the hold would have done that. As you removed the copra from the square of the hatch, the rest of the copra would have floated down to the hatch.

"Q. Would you have deemed it advisable to have endeavored to have removed the dry copra without mixing it with the wet copra?

"A. Yes, sir. I am talking now of what I saw the state the vessel was in when I saw her. If it was bags, you would not start to use the grabs. If it was dry, you would shovel it into baskets. I was referring to the state of the vessel when I saw it." (*i.e.*, during three days "sometime about the middle of the month of May," R., p. 179).

"Q. Then I understand you to say that you would only use grabs after you had removed that portion of the cargo which could be taken out by means of baskets and shovels. Is that so?

"A. Yes, sir."

On this point Mr. Miller's testimony (on cross-examination) was as follows (187):

"Q. How should that copra cargo have been taken off in your opinion?

"A. Considering that approximately sixty per cent of the copra was get-at-able with spades and shovels, I certainly would have dug out what was accessible with shovels and baskets and used grabs on the remaining portion that was under water. * * *

"Q. How could steam have been obtained for the operation of the winches to work the grabs to take off the copra?

"A. By pumping out the machinery department of the vessel the main and donkey boilers would have been accessible.

"Q. Or could it also have been obtained from ships lying alongside the '*Nippon*'?

"A. In calm weather; yes.

"Q. And could the engine room of the '*Nippon*' have been cleared of water?

"A. Certainly. A good attack on the water would have cleared it out, as there was no serious damage in that department.

"Q. And by clearing the engine room of water could the boilers of the '*Nippon*' have generated steam?

"A. Certainly. * * *

"Q. You examined the '*Nippon*' while she was in dry dock at Olongopo, did you not?

"A. Yes, sir.

"Q. You know just what leaks were there?

"A. Yes, sir.

"Q. Where did the water get into the engine room, Mr. Miller?

"A. The main bulk of it entered the engine room of the '*Nippon*' by way of the floor underneath. In the after-bulkhead between the engine room and No. 3 hold there were a number of little leaks from rivet holes, but there was no serious damage in that department to admit water enough that the pumps could not have gotten the better of it.

"Q. Do you mean to say that the engine room could have been pumped dry?

"A. Yes, sir.

"Q. Are you sure?

"A. Yes, sir; by plugging up the rivet holes and using cement to fill the holes where the water was coming in.

"Q. Do you know if the water in the engine room was rising and falling with the tide?

"A. Very little. I only know by what people told me. The water was black and inkish and it could not have remained that way if it went out with the tide.

"Q. Do you know about the water that welled into the engine room through the coal bunkers?

"A. There were no holes in her aft of the coal bunkers except damaged rivets and seams.

"Q. Do you know that the owners of the vessel were protesting because the coal in the coal bunkers of the vessel was not jettisoned in order to repair the holes that they claimed were underneath the holes in the coal bunkers?

"A. It was reported by the men in the engine room that when the vessel took the ground a stream of water burst in on the starboard side and flooded everything; but that hole is yet to be found. It never existed."

This is another item of evidence in the case that was not disputed.

And now contrast the above with the means that actually were used in the salvage operations of the plaintiffs. For nearly six weeks, instead of having lighters alongside every hatch, they had one scow. That was all. And this appears from the testimony of the plaintiff's manager, Mr. Reis himself. (See list of vessels on page 48 of the record.) Instead of having grabs with which to take the copra out of the hold from the beginning of the operations, it appears from the testimony of Taylor, the first of plaintiff's men to be put in charge of the work on the ship, that after taking out that part of the dry copra that was in sacks, they used platforms.

"I built platforms out of planks," Taylor testified (83), "twelve-inch planks by about thirty to forty feet long—just let a platform down on top of it" (the copra) "and then the men, one or two men, could work off the platform and reach the copra, and we got out all we could of it that way. *It was a little slow, this way, because there couldn't many of the men work on it at a time.*"

Grabs were not sent out until the latter part of June, about a month after the operations were begun. After so stating in his testimony, Captain Anderson, the second of plaintiffs' employees to be placed in charge of the work, testified (100): "I began to use them at once, yes, sir—*when we found we couldn't use any other means to get the copra out.*"

Taylor and Anderson attempted to defend their failure

to make use of that sort of apparatus on the theories, (1st) that, as they could only have been operated directly down and up in the hatchways, the part of the copra that was under the decks could not have been reached by the grabs, and (2nd) that because of their weight they would have crushed some of the copra through which they descended and would have driven some of the strata of copra that was only submerged at high tide down into the strata that was continually submerged and which was, therefore, in a more rapidly advancing state of decomposition.

Since men had to be sent into the holds anyway to shovel the copra into the baskets that were used to hoist it on deck under the method that was adopted, there would seem to be no substance to the former of these theories. If the men could go under the deck to shovel it into baskets, of course they could just as well have gone under to shovel it to a point under the hatch where it could be reached by the grabs. That this could have been done was suggested by Captain Taylor himself (72). Besides, grabs actually were used toward the end of the operations. It was by that means that the wet copra was gotten out which the witnesses for the plaintiffs testified was jettisoned. This in itself proves their practicability for such use.

The latter of the theories referred to is equally untenable. The quantity of copra that would have been crushed could obviously not have exceeded the 525 tons which, as a result of the slowness of plaintiff's procedure, were permitted to remain so long in the water in the holds of the stranded ship that they were too worthless to do anything with but throw overboard; and certainly such of the copra as might have gotten wet if driven through to the bottom by the operation of the drags on their

downward trips could not have been very much hurt by the wetting if taken out immediately on the upward trips or within a reasonable time.

If, even by the method that was adopted, plaintiffs had promptly taken out the top or dry layer of copra (which, it seems, had been stowed away in sacks), and the other two strata (*i.e.*, the one that was under water only when the tide was high and the bottom layer that was continually submerged) had been taken out within two weeks, it is clear from the evidence that the whole cargo, instead of only part of it, could have been saved in marketable condition. All the wet copra that *was* saved was sold, even that which was sent to Manila four or five weeks after it had been wet.

Nor is the contention of plaintiffs that the delay was caused in large part by the bad effect on the laborers of the gasses thrown off by the wet copra entitled to any weight. For, admitting, for purposes of argument, that the gasses did have the effect described, and that, as a consequence, the men could not remain below decks for the normal period of time, still it is a fact that plaintiffs did succeed in getting men for the work covering a period of six weeks or more, and, if that is true as to so long a period, certainly enough men could have been procured and induced to stay aboard long enough to have made possible the completion of the work in two weeks with the help of the grabs.

But the case is full of evidence of incompetence and it would too greatly lengthen this brief to point out every instance. Many have been pointed out hereinabove. The Court, when it reads the record, will find many others fully as indicative of the utter unfitness of plaintiffs and their employees to have engaged in such an undertaking.

CONCLUSION.

The defendant, therefore, and in view of all of the above, contends that the plaintiffs ought not to have been held by the court below to have been salvors of the copra in question in this case, but should have been regarded and treated as intruders without warrant—as having seized unlawfully the property of the defendant over its protests and as having wrongfully and unlawfully prevented the defendant's agents in Manila from recovering possession of the property for the purpose of saving it through the employment of persons who were at hand, ready and willing to undertake the work, and who were competent to do so and properly equipped.

It is contended that, so far at least as this defendant is concerned, the plaintiffs not only ought to have been denied any award but that they ought to have been mulcted in damages to cover the loss to defendant of the jettisoned copra, also that which was caused by the deterioration of the wet copra that was sent to Manila and sold; and in any event, if this honorable Court should be inclined to agree with the court below in its other conclusions, the award of forty per cent, considering all the circumstances disclosed, was grossly excessive.

RESPECTFULLY SUBMITTED,

HARRY W. VAN DYKE,

Attorney for the Oelwerke Teutonia.

CHARLES E. COTTERILL,

EDMUND W. VAN DYKE,

Of Counsel.

In the Supreme Court of the United States

October Term [redacted] 1917

Simon Eckardt and Isadore Eckardt, co-partners doing business under the firm name and style of Eckardt and Company,

Appellants,

vs.

No. [redacted]

Oil-Weekly Tribune,

Appellee.

Oil-Weekly Tribune,

Appellee,

vs.

Simon Eckardt and Isadore Eckardt, co-partners doing business under the firm name and style of Eckardt and Company,

Appellants.

Appeal from the [illegible] Court of the District of Columbia.

Statement of Facts and Brief for Appellants.

CONTENTS.

PAGE.

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 3

ASSIGNMENTS OF ERROR 7

BRIEF OF THE ARGUMENT 7

POINT ONE—The court has jurisdiction to entertain this appeal and to pass upon all the issues of law and fact presented by the record 9

Authorities.

Act 136 Phil. Comm., Sec. 56, par 4 9
Act of Congress of July 1st, 1902, Sec. 9 9
Act of Congress of August 29, 1916, Sec. 26 9
Baltimore, etc., Co., *v.* Patterson, 66 L. R. A., 232 9
De la Rama *v.* de la Rama, 201 U. S., 303 10
Hemmeway *v.* Fisher, 20 How., 255 10
Heath *v.* San Nicolas, 7 Phil. Reps., 532 10
Lehigh Valley R. R. Co. *v.* Cornell, etc., Co., 218 U. S., 264 10
The *Cayuga*, 49 Fed. Reps., 172 9
The *Havilah*, 48 Fed. Reps., 648 9
Walker *v.* Dreville, 12 Wallace, 440 10

POINT TWO—The steamer *Nippon* was derelict when the plaintiffs took possession of her for the purpose of effecting the salvage of the ship and her cargo, and their possession of her for that purpose was lawful 11

(*a*) The issues made by the pleadings as to abandonment 11
(*b*) The evidence as to abandonment 12
(*c*) The findings of the lower courts as to abandonment 20
(*d*) The law as to derelicts and the right of salvors to take and retain possession of such vessels 21

Authorities.

PAGE.

Hartshorn *v.* Twenty-Five Cases, etc., Fed. Case No. 6168 21
Kennedy Civil Salvage, p. 55 24
Parsons on Admiralty, Par. 280 22
Philippine Code of Civil Procedure, Sec. 334, par. 5 26
The *Adventure*, 8 Cranch 227 22
The *Bee*, Fed. Case No. 1219 21
The *Burlington*, 73 Fed. Rep. 237 27
The *Geopraina*, Fed. Case No. 5355 27
The *Haverabad*, 11 Fed. Rep. 749 21
The *Island City*, 66 U. S. 121 22
The *Ida L. Howard*, Fed. Case No. 6999 21
The *John Gilpin*, Fed. Case No. 7345 ..... 22 and 27
The *Lockwood*, 37 Fed. Rep. 237 ..... 22 and 24
The *Laura*, 81 U. S., 344 ..... 21 and 27
The *Shawmut*, 155 Fed. Rep. 476 24
The *Senator*, Fed. Case No. 12664 27

POINT THREE—The services of plaintiffs as salvors were prompt, skillful and efficient 28
(*a*) The issues presented by the pleadings 28
(*b*) The findings of the lower courts 30
(*c*) The conditions under which the work was accomplished 31
(*d*) The promptness with which plaintiffs commenced the work 33
(*e*) Salvage facilities in Hongkong and Manila compared 38
(*f*) The methods employed by plaintiffs 43
(*g*) Plaintiffs' failure to salve all the copra 68
(*h*) The time occupied by the salvage operations 70

POINT FOUR—The salvage award allowed plaintiffs by the decision of the Supreme Court of the Philippine Islands is grossly inadequate and should be increased 77
(*a*) The amount allowed by the trial court 77
(*b*) The cost of the salvage operations 78

PAGE.

(*c*) The determination of the amount of the award.. 81
(*d*) The distinction between wet and dry cargo..... 84
(*e*) The expense incurred as an element to be considered in fixing the salvage award..... 86
(*f*) The weight to be given the opinion of the Philippine Supreme Court as to the amount of the award..... 90
(*g*) The lower appellate court gives no reason for its action in revoking the decree of the trial court as to the amount of the salvage award..... 91
(*h*) The salvage award of the trial court was not excessive..... 92
(*i*) The circumstances of the case justify the allowance of interest and costs..... 99

Authorities.

Act 136 Phil. Commission, Sec. 56..... 100
Act of Congress of July 1st, 1902, Sec. 9..... 100
Act of Congress of August 28, 1916, Sec. 26..... 100
Constitution, Art. 3, Sec. 2..... 100
Heath *v.* San Nicolas, 7 Phil. Reps. 532..... 100
Hemmenway *v.* Fisher, 20 How. 255..... 101
Iribar *v.* Millet, 5 Phil. Reps. 362..... 82
Post *v.* Jones, 19 How. 161..... 93
Southern Pacific Co. *v.* Jensen, decided May 21, 1917, not reported..... 99
The *Ajax*, 1 Fed. Cases, 252..... 83 and 84
The *America*, 1 Fed. Cases, 596..... 83 and 84
The *Adolph*, Fed. Case No. 17713..... 88
The *Brewster*, Fed. Case. No. 1852..... 83 and 85
The *Blackwell*, 13 Wallace 1..... 95 and 97
The *Carl Schurz*, 5 Fed. Cases, 84..... 87
The *Connemara*, 108 U. S., 359..... 93
The *Edwards*, 12 Fed. Rep. 508..... 89
The *Flora Rodgers*, 152 Fed. Rep. 288..... 94
The *Gibson*, 160 Fed. Rep. 250..... 94
The *Hope*, 10 Peters 116..... 93
The *John Wesley*, Fed. Case No. 7433..... 83 and 86

PAGE.

The *Job H. Jackson*, 161 Fed. Rep. 1015 82
The *L. W. Perry*, 71 Fed. Rep. 745 89
The *Myrtle Tunnell*, 146 Fed. Rep. 332 94
The *Lamington*, 86 Fed. Rep. 688 ..... 92 and 94
The *Lugana*, 215 Fed. Rep. 964 94
The *Mulhouse*, Fed. Case No. 9910 ..... 83 and 85
The *Northwester*, Fed. Case No. 10338 ..... 83 and 85
The *Nathaniel Kimball*, Fed. Case No. 10033 ..... 83 and 84
The *Slobodna*, 35 Fed. Rep. 537 ..... 83 and 86
The *Sabine*, 101 U. S., 384 ..... 78 and 80

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

SIMON ERLANGER AND ISADORE ERLANGER, CO-PARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF ERLANGER AND GALINGER, *Appellants*, v. OELWERKE TEUTONIA, *Appellee*.	No. 1101
OELWERKE TEUTONIA, *Appellant*, v. SIMON ERLANGER AND ISADORE ERLANGER, CO-PARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF ERLANGER AND GALINGER, *Appellees*.	No. 1042

BRIEF AND ARGUMENT FOR SIMON ERLANGER AND ISADORE ERLANGER, AS APPELLANTS.

STATEMENT OF THE CASE.

This is an appeal by Simon Erlanger and Isadore Erlanger, plaintiffs in the trial court, and by Oelwerke Teutonia, a corporation, one of the defendants therein, from a final

judgment of the Supreme Court of the Philippine Islands.

For convenience Simon Erlanger and Isadore Erlanger will be designated in this brief as "the plaintiffs" and Oelwerke Teutonia as the "defendant."

The proceeding was commenced by a complaint filed in the Court of First Instance of Manila under date of August 5th, 1913 (Rec. p. 1), subsequently superseded by an amended complaint, dated September 23, 1913 (Rec. p. 2). In the original complaint the defendant Oelwerke Teutonia was designated under the fictitious name of John Pike, but in the amended and supplementary complaint, its identity having in the meantime been made known, it is sued in its proper name.

The purpose of the action was to obtain a judicial determination of the rights of plaintiffs as salvors of the Swedish steamship *Nippon* and her cargo, as against the owners thereof.

The Supreme Court of the Philippine Islands, having ruled that an action in rem can not be maintained in cases falling within the admiralty and maritime jurisdiction of the courts of the Philippine Islands (Heath *v.* The S. S. San Nicolas, 7 Phil. Rep. p. 532), upon the filing of the complaint and upon affidavits showing that the defendants were non-residents (Rec. p. 9), a writ of attachment was issued and the property in dispute was seized by the officer of the Court. Process was served upon the defendants by publication and within the time limited by the court appearances were entered on behalf of the owners of the salved vessel and of her cargo. The defendant Oelwerke Teutonia, on October 14, 1913, filed an answer to plaintiff's amended and supplementary complaint, setting up its claim as owner of 1,842.28 tons of copra which were on board the *Nippon* when she stranded. Answers were filed on behalf of the owners of the vessel and of other persons claiming an interest in the cargo

other than copra, but their claims were either adjusted amicably with plaintiffs or by acquiesence in the final judgment, the issues in the present appeal being limited to the plaintiffs and to the defendant, Oelwerke Teutonia.

STATEMENT OF THE FACTS.

The facts established by the evidence, which fully supports the averments of plaintiffs' amended and supplementary complaint (Rec. p. 2), and the findings of the court below (Rec. p. 219), are briefly as follows:

1. That on May 8, 1913, the Swedish steamer *Nippon*, under command of Captain E. Eggert, sailed from the port of Manila, Philippine Islands, for the port of Hamburg, Germany, with a cargo consisting chiefly of copra in bulk, the property of defendant.

2. That on the 9th day of May, 1913, the *Nippon* was overtaken by a storm, which carried her out of her true course, and stranded her on Scarborough Reef, a ledge of coral rock almost constantly submerged, situated about two hundred miles off the coast of the Island of Luzon, P. I. The hull was pierced in several places and the vessel, with her holds full of water, became a helpless wreck.

3. On May 13, 1913, the S. S. *Manchuria* on her way to Hongkong from Manila visited the scene of the wreck and took from it at their request Captain Eggert and all of the crew then remaining on board the vessel, which was thereupon abandoned and left derelict.

4. On May 14, 1913, plaintiffs having knowledge of the fact that the *Nippon* had been abandoned, chartered a steamer for the purpose of salving the vessel and her cargo, and proceeded to the scene of the wreck fully equipped with salvage appliances and with a full complement of experienced divers, wreckers, stevedores, and laborers. Upon the arrival of plaintiffs at Scarborough Reef the *Nippon* was found to be wholly deserted, in danger of

becoming a total loss at any time should a storm arise. Plaintiffs promptly took possession of her and after protracted efforts, continuing for more than forty consecutive days, and involving the expenditure of over $60,000.00 succeeded in floating the steamer and in salving a large part of the cargo. The salved value of the cargo belonging to the defendant, Oelwerke Teutonia, as shown by its sale under the authority of the court during the course of the proceedings, was found to be ₱142,657.05 (Rec. p. 220). After the commencement of the action the owners of the vessel (Rec. p. 1) satisfied plaintiffs' claim for her salvage.

Upon the allegation of these facts the plaintiffs prayed that they be allowed the sum of ₱100,000.00 as a reasonable compensation for the salvage of the cargo and that their claim be recognized as a lien upon the salved merchandise and the proceeds of its sale, then in the hands of the Insular Collector of Customs subject to the orders of the court.

The answer of the defendant, Owelwerke Teutonia (Rec. p. 10), admits the formal averments of the amended and supplementary complaint and claims the ownership of the 1,842.28 tons of copra which the *Nippon* was carrying when the disaster occurred; avers that the said copra was of the value of ₱400,000.00 and by the allegations incorporated into its special defense and counterclaim contends:

(*a*) That the *Nippon* was not abandoned at the time plaintiffs took possession of her;

(*b*) That on May 15, 1913, defendant, through its, agent, notified plaintiffs that their services in the salvage of the copra were not desired, and protested against their continuing in possession thereof;

(*c*) That the *Nippon* was not in any immediate peril at the time plaintiffs took possession of her;

(*d*) That plaintiffs were not skillful or diligent in the performance of the salvage operations undertaken by them;

(*e*) That by reason of plaintiffs' failure to salve all the copra on the stranded vessel it was damaged in the sum of ₱177,432.00, alleged to be the value of that part of the copra which was jettisoned in the course of the salvage operations.

On January 6, 1914, the trial court on motion of plaintiffs, and with the consent of the defendant, Oelwerke Teutonia, instructed the Insular Collector of Customs, under whose direction the salved copra had been converted into cash, to deposit the net proceeds thereof, amounting to the sum of ₱142,657.05, with the Hongkong & Shanghai Banking Corporation, subject to the orders of the court (Rec. p. 16). This was done and the fund has been since that time in the possession of the said bank in the City of Manila together with the interest thereon accruing at the rate of three and one half per cent per annum, compounded annually.

On the 29th day of January, 1914, and succeeding days, the said cause was heard by the Honorable A. S. Crossfield, one of the judges of the Court of First Instance of Manila, who, on the 13th day of May, 1914, rendered judgment (Rec. pp. 212 to 217, inclusive) in favor of plaintiffs herein for one-half of the net proceeds of the sale of the salved copra, namely, ₱74,298.36, and one-half of the interest accruing thereon. To this judgment plaintiffs and the defendant, Oelwerke Teutonia, noted timely exceptions (Rec. p. 217), and their respective motions for a new trial having been overruled (Rec. p. 217) excepted to the ruling and carried the case on appeal to the Supreme Court of the Philippine Islands for review upon the law and the facts.

Philippine Code of Civil Procedure, Sec. 497, Par. 2.

The said cross appeals were heard by the Supreme Court of the Philippine Islands upon the record, printed briefs, and oral arguments submitted on behalf of the parties. On the 9th day of March, 1916, the Court rendered its decision (Rec. pp. 219 to 238 inclusive) by which, affirming in part and in part reversing the decision of the trial judge, it was directed that judgment be rendered for plaintiffs in the sum of ₱41,721.55, payable out of the proceeds of the salved copra, this being equivalent to twenty-five per cent of the value of that part of the copra salved dry and forty per cent of the value of that part of it which was salved wet. To this decision the plaintiffs and defendant, Oelwerke Teutonia, duly excepted. On March 29, 1916, plaintiffs by their attorneys made petition in writing (Rec. p. 239) for a rehearing and for a modification of the decision of the said Supreme Court, upon the ground that the award allowed by the court was inadequate, and prayed for leave to make oral argument in support of the motion. Leave was granted and argument was heard by the Supreme Court in support of the plaintiffs' motion on July 11, 1916 (Rec. p. 239). Thereafter, on the 27th day of July, 1916, the Supreme Court of the Philippine Islands entered an order modifying its former order for judgment (Rec. p. 239) by increasing the amount of the salvage award allotted to the plaintiff to the sum of ₱57,062.82, this being forty per cent of the net value of all the copra salved by plaintiffs, wet and dry. To this decision and to the judgment (Rec. p. 246) entered pursuant thereto, the plaintiffs and defendant excepted and in due time removed the cause to this Honorable Court by cross appeals.

The record of the trial court has been condensed by the elimination of a large number of bulky exhibits and the substitution therefor of summarized statements of the contents of the exhibits, the correctness of the record as

a whole having been expressly stipulated in writing (Rec. p. 246).

THE APPEAL OF THE PLAINTIFFS, ERLANGER AND GALINGER.

With their petition for the allowance of their appeal plaintiffs filed (Rec. p. 248) the following—

ASSIGNMENTS OF ERROR.

1. That the amount allowed to your appellant, to wit, the sum of ₱57,062.82, equivalent to $28,531.41, is grossly inadequate in law and under the facts of the case for the service rendered.

2. That the award of ₱57,062.82, or $28,531.41, is contrary to the law and the evidence in the case and is a wholly inadequate award.

BRIEF OF THE ARGUMENT.

1. This Court has jurisdiction to entertain the appeal and to pass upon all the issues of law and fact presented by the record.

2. The steamer *Nippon* was a derelict vessel when plaintiffs took possession of her for the purpose of effecting the salvage of the ship and her cargo.

3. Plaintiffs' possession of the vessel and her cargo for that purpose was lawful in its inception and was lawfully continued.

4. The services rendered by plaintiffs as salvors were prompt, skillful, efficient, and successful.

5. The expenditures incurred by plaintiffs in effecting the salvage operations were properly and necessarily incurred, and were not excessive.

6. Under the circumstances of the case plaintiffs are entitled to an award sufficient in amount to reimburse them for their expenditures in behalf of defendant and to give them such additional compensation as shall sub-

stantially remunerate them for their exertions and the risk incurred, and to interest.

7. The amount awarded plaintiffs by the judgment of the Supreme Court of the Philippines is much less than that to which they are in justice entitled and should be substantially increased, with interest and costs.

POINT ONE

THE COURT HAS JURISDICTION TO ENTERTAIN THIS APPEAL AND TO PASS UPON ALL THE ISSUES OF LAW AND FACT PRESENTED BY THE RECORD.

Plaintiffs' appeal having been taken and allowed (Rec. p. 247) on the 9th day of September, 1916, is governed by the provisions of the Act of Congress of August 29th, 1916, which is a re-enactment in identic terms of Section 248 of the Judicial Code. The value in controversy exceeds $25,000.00 (Rec. p. 243). The suit out of which the appeal has grown is one falling within the original admiralty jurisdiction of the Court of First Instance of Manila (Sec. 56, par. 4, Act. 136 of the Philippine Commission). The grant of admiralty jurisdiction to the Courts of First Instance of the Philippine Islands has been expressly recognized and confirmed by Section 9 of the Act of Congress of July 2, 1902, in force when this action was commenced, and by Section 26 of the Act of August 29, 1916. Salvage suits are subject to the admiralty jurisdiction. (Note to Baltimore etc. Co. *v.* Patterson, 66 L. R. A. p. 232, and cases there cited.) In the absence of express statutory provisions to the contrary the review of decisions of admiralty courts is by appeal, and the appeal brings up the whole case for review.

> The Havilah, 48 Fed. Rep. 648.
> The Cayuga, 49 Fed. Rep. 172.

> The writ of error, from its form and the principles which govern it, is peculiarly appropriate to judgments at common law, and is inconvenient and embarassing when used as process to remove decrees in chancery and admiralty to the appellate and revising court. The ordinary and uniform mode of removing such decrees to the appellate and revising court,

wherever such jurisdiction has been established, has been by appeal.

Hemmeway *v.* Fisher, 20 Howard 255, 15 L. Ed. 799.

It is true that the Supreme Court of the Philippine Islands has decided—perhaps incorrectly—that the grant of admiralty jurisdiction to the Philippine courts did not carry with it the admiralty procedure (Heath *v.* The San Nicolas, 7 Phil. Reports, p. 532) but it is also true that, as in Louisiana, the law of the Philippine Islands does not now, and never has recognized any technical division of cases corresponding to our classification of them as being legal or equitable in nature. But as the statute establishes the two modes of review by writ of error and appeal, the test must be what would have been the proper remedy had the case been instituted in a Federal Court.

Walker *v.* Dreville, 12 Wallace 440, 20 L. Ed. 429

Even when the purpose of the review it to determine the jurisdiction of the lower court in an admiralty case the method is by appeal.

Lehigh Valley R. R. Co. *v.* Cornell Steamboat Co., 218 U. S. 264, 54 L. Ed. 1039.

Upon appeals from the Supreme Court of the Philippines this Court will review the facts and is not bound by the incidental expression of conclusions of fact contained in the opinions of either of the lower courts; although upon such review it will—

"generally accept the concurrent conclusions of the trial and appellate courts."

De la Rama *v.* De la Rama, 201 U. S. 303, at pp. 309, 310, 311 and 312.

POINT TWO

THE NIPPON WAS DERELICT WHEN THE PLAINTIFFS TOOK POSSESSION OF HER FOR THE PURPOSE OF EFFECTING THE SALVAGE OF THE SHIP AND HER CARGO, AND THEIR POSSESSION OF HER FOR THAT PURPOSE WAS LAWFUL.

THE ISSUES MADE BY THE PLEADINGS AS TO ABANDONMENT.

Plaintiffs, in their amended and supplementary complaint (Par. 9) averred in this regard (Rec. p. 4):

> "That the said S. S. *Nippon* was then and there wholly abandoned and left derelict by her master and crew, who deserted the said vessel by reason of the peril to their lives, and who elected to proceed to the port of Hongkong on board the aforementioned S. S. *Manchuria*."

The answer of the defendant denies this allegation (Par. V.) and alleges (Second defense, Par. 2) (Rec., p. 11),

> that after the master and crew of the *Nippon* had embarked on the *Manchuria*, the Coast Guard Cutter *Mindoro*, a Government vessel of the Philippine Islands, arrived upon the scene on said morning of May 13th and offered to take the master and crew of the *Nippon* to Manila; that the Master, E. Eggert, of the *Nippon* declined the offer to go to Manila on the *Mindoro* because of the well-founded opinion that better salvage vessels and apparatus could be obtained in the City of Hongkong to which port the *Manchuria* was bound; that the said Master of the *Nippon* did not abandon his ship with intention of not returning but on the contrary with the firm hope and intention of returning and recovering both vessel and cargo by means of appropriate salvage apparatus which he expected to obtain in the City of Hongkong, or in the City of Shanghai, or in Japan.

This defines the first issue which merits full discussion for the reason that it has a bearing both upon the status of the plaintiffs as salvors, and upon the quantum of the compensation which their services merit. For although, as we shall presently have occassion to demonstrate, the legality of their possession of the *Nippon* for salvage purposes was by no means dependent upon the fact of abandonment, the true legal abandonment which this case presents, fixes the status of plaintiffs once for all.

THE EVIDENCE AS TO ABANDONMENT.

The evidence shows that the steamer *Nippon* sailed from Manila on or about May 7, 1913, with a cargo of copra, in bulk, and a small lot of general merchandise in boxes and bales. On the 9th, the vessel stranded on a submerged coral reef known as Scarborough Reef, situated about two hundred miles from the City of Manila and about one hundred and twenty miles from the nearest coast. The hull of the vessel was pierced in several places and she was in such a condition that had she slipped off the reef she would have gone to the bottom immediately.

Testimony of Captain Eggert (Rec. p. 146)
Telegram from Westin (Rec. p. 19).
Statement of sailors of *Nippon*, findings, (Rec. p. 225)
Report of Government Committee (Rec. p. 29)

The Court will observe that the telegram from Westin, the mate of the *Nippon*, and the statement of the *Nippon's* sailors, referred to above, are included with other correspondence and reports relating to the wreck of the *Nippon* in a compendium identified as Plaintiff's Exhibit B (Rec. p. 19) and that by stipulation in open court (Rec. p. 19) it was agreed that the statements contained in the said Exhibit should be considered by the court with the same effect as though the persons by whom they are signed respectively had appeared in court and testified under oath to the facts therein set forth.

On the morning of the 10th the first officer of the *Nippon* put off from the wreck with a boat's crew in the hope of securing aid for the rescue of the rest of the ship's company. He made his way to the town of Santa Cruz, Zambales, on the Luzon Coast, and from that point telegraphed to Manila reporting the plight of his companions and their vessel. His telegrams eloquently portrayed the mate's realization of the peril to which his shipmates had been left exposed.

Telegram from Westin (Rec. p. 19).
Plaintiff's Exhibit B (Rec. pp. 19 to 30 inclusive).

Westin's telegram was received in Manila on May 13, 1913. The Philippine Government immediately dispatched the coast guard cutter *Mindoro* to the scene of the wreck, with a life saving crew and appliances. On the same day there sailed from the port of Manila en route to Hongkong, the Pacific Mail S. S. *Manchuria*. Upon arrival at the scene of the wreck the *Mindoro* encountered the *Manchuria* and found that she was about to resume her journey to Hongkong, having taken on board the Captain and remaining members of the crew of the *Nippon*. The Captain of the *Mindoro* offered his assistance to Captain Eggert, (Rec. p. 11) but the only request made of him was that he call at Santa Cruz to pick up the first officer of the *Nippon* and his men, who were still waiting at that point, Captain Eggert expressly stating that he wished to avail himself of the opportunity of going direct to Hongkong on the *Manchuria* instead of returning to Manila on the cutter *Mindoro*.

Findings, Decision Phil. Sp. Ct., Record p. 219.

A wireless message was sent to shore from the *Manchuria* (Exhibit B, Rec. p. 19) announcing the rescue of the men left on the *Nippon* and their departure for Hongkong, likewise the plight of the *Nippon* and the fact of her

abandonment. This message was signed by the Captain of the *Manchuria* but was seen by the Captain of the *Nippon* before it was dispatched.

Par. 12, Findings Phil. Sp. Ct. Rec. p. 220.
Testimony of Col. H. B. McCoy (Rec. p. 123).
Testimony of Mr. S. Erlanger (Rec. p. 37).

It was the publication of this wireless dispatch in the Manila papers, and its confirmation by the officers of the *Mindoro* upon their return to port, which gave plaintiffs the information upon which they undertook the salvage operations here under consideration.

Testimony of Mr. Reis (Rec. p. 44).

Captain Eggert contended in his testimony in behalf of defendant that when he left Scarborough Reef on the *Manchuria* it was not his intention to abandon the *Nippon* but to proceed to Hongkong for the purpose of making arrangements for her salvage.

Testimony of Capt. Eggert (Rec. p. 154).

That any such intention then existed may, however, well be doubted for several reasons. In leaving Scarborough Reef Captain Eggert had the choice of returning to Manila on the Coast Guard Cutter *Mindoro* or of going to Hongkong on the *Manchuria*. He chose the latter alternative. If he had intended to take steps looking to the salvage of the vessel it stands to reason that he would have preferred to return to Manila, distant only two hundred miles from the scene of the wreck rather than to go to Hongkong, twice that distance away. It requires no nautical skill to make it evident that the nearest port would naturally be the most advantageous base from which to conduct such operations, and this obvious conclusion is expressly stated by Captain Robinson, an expert wrecker and diver, called as a witness on behalf of defendant.

Testimony of Capt. Robinson (Rec. p. 200).

We shall have occassion, in discussing the issue as to the efficiency of the services rendered by plaintiffs, to consider further the matter of the alleged advantage of using Hongkong rather than Manila as a base of operations. Again, if the purpose of Captain Eggert's journey had, if fact, been to obtain assistance with a view to undertaking the salvage of his vessel he would naturally have displayed a reasonable degree of activity in making arrangements with that object in view. His own testimony, however, shows quite the contrary course of conduct.

Testimony of Capt. Eggert (Rec. p. 143).

He arrived in Hongkong on the afternoon of May 14th. He says that he commenced the next day "looking about" for someone to undertake the salvage of the *Nippon*. Although he gives the names of two or three firms or persons said to have been approached by him with this object in view, he does not contend that he made any arrangements, tentative or final, for such service up to May 17, when he received from his owners a cablegram, a copy of which is attached to his deposition (Exhibit C, Rec. p. 155). From the terms of that cablegram it is evident that at the time it was sent Captain Eggert had not reported any arrangement looking to the salvage of his vessel, for in that wire he is requested to "report upon salvage prospects." The inference is that up to that time he had not said anything at all to indicate that he had made any arrangements relating to the salvage of the vessel. We do not know what Captain Eggert replied to the cablegram last referred to, for he has refused to produce the subsequent telegraphic correspondence between himself and his owners because he was of the opinion (Testimony of Capt. Eggert, Rec. p. 154) that

> Neither the letters nor the correspondence can be of any assistance to me in showing that I intended to go back or not.

In this connection it is to be remembered that when Captain Eggert's deposition was taken, some time before the trial, the owners of the *Nippon* were contesting plaintiffs' right to take possession of the vessel for the purpose of effecting her salvage.

After the *Nippon* was floated and brought into port the owners paid plaintiffs over fifty per cent of her salved value as compensation for their services and the suit was discontinued as to them.

> Findings, Decision of the Philippine Supreme Court, Rec. p. 220.

In addition to the *prima facie* presumption of abandonment arising from the total desertion, and the absence of any hope of recovery on the part of Captain Eggert, as disclosed above, the *circumstances* are replete with proofs of abandonment. Among these circumstances are the following:

(1) The wireless message (Ex. B, Rec. p. 19) dispatched from the *Manchuria* on May 13th, announced the abandonment of the vessel *in hæc verba*. There can be no question in the mind of any reasonable person that this announcement was made knowingly and intentionally and that it would never have been sent if it did not truly and correctly represent the mental attitude of Captain Eggert at the time of its dispatch. Captain Eggert knew the contents of this cable and was a party to its being sent.

Upon this point the Supreme Court of the Philippine Islands in its decision made an express finding of fact, as follows (Rec. p. 219):

> Twelfth. On May 13, 1913, Dixon, Captain of the *Manchuria* sent the following message: "S. S. *Manchuria*, May 13, 1913. All rescued from *Nippon*. Stranded on extreme north end of shoal. Vessel stranded May 9. She is full of water fore and aft and is badly ashore. Ship abandoned. Proceed

> Hong Kong. Dixon." The captain of the *Nippon* saw the above message before it was sent.

This finding is fully supported by the evidence. Col. H. B. McCoy, Philippine Collector of Customs at the time of the wreck of the *Nippon*, testifies that he was present at a conference between the owners of the vessel and plaintiffs; that Captain Eggert was there; that on that occasion Captain Eggert stated that—

> when this message was being prepared that he was with Captain Dixon, and that the message was shown to him before being sent.

This statement is corroborated by the testimony of Mr. Simon Erlanger, who was also present at the meeting at which the statement was made.

It is true that Captain Eggert now denies that he had any knowledge of the contents of this message at the time it was despatched by Captain Dixon (Rec. p. 149) and denies that he made the statements regarding it attributed to him by Colonel McCoy and Mr. Erlanger, but his word will not weigh against that of these witnesses, one of whom was entirely disinterested, particularly as he limits his denial to the dubious statements, "No, I do not remember it," and "I think I did not." The finding of the Philippine Supreme Court on this point convicts Captain Eggert of deliberate falsehood in an essential matter, and is sufficient to justify disbelief in his other self-serving statements not open, unfortunately, to such direct contradiction. *Falsus in uno, falsus in omnibus.*

(2) The services of the *Mindoro* despatched for the purpose by the Insular Government, were at the disposal of Captain Eggert, and were declined. (See report of Captain Anderson, in Exhibit B, Rec. p. 23, quoted in full in the decision below, Rec. p. 225.) If Captain Eggert had been merely leaving the *Nippon* temporarily

and with intention to resume possession when the imminent danger had passed, the *Mindoro* would have suited his purposes much better than the *Manchuria*. The Captain testifies that the imminent danger had passed and the weather was fine when he went aboard the *Manchuria* (Rec. p. 147). If he were merely going to Hongkong to enlist the services of a salvage crew, even if his errand demanded his personal attention, he need not have carried with him his entire staff and crew. Even if he did not feel justified in leaving one or more in charge of his vessel on board of her, the *Mindoro* was available for his purpose. Furthermore, he was leaving his First Officer and nine or ten men in the Philippine Islands. The *Mindoro* was going direct from the *Manchuria* to Santa Cruz to pick up these men. If Captain Eggert had any further interest in the *Nippon*, if he had merely been leaving her temporarily on an errand for assistance, he would have sent word to his First Officer of his intended return, and instructions to remain in charge and in possession of the vessel until his return. But knowing that the *Mindoro* was going to these men, and knowing that the message was being sent announcing the abandonment of the *Nippon*, he sent no word either to his officer and men or to Manila, announcing any idea of return or negativing in any manner the announcement of abandonment.

(3) Captain Eggert spent three entire days in Hongkong without engaging the services of any salvage expedition. He arrived there on the evening of May 14th, and his efforts were in no wise interrupted until the evening of May 17th (Rec. p. 143 and 144). He believed that the vessel was in imminent danger of slipping off the edge of the reef and sinking (Rec. p. 146). Hongkong, he contends, is a far better port than Manila for the furnishing of salvage equipment and men (Rec. pp. 143). And yet while Manila sent out a salvage expedition within

twenty-four hours after the first decision to do so, Captain Eggert would have the Court believe that in all his urgent anxiety he had accomplished absolutely nothing in three entire days of diligent effort at Hongkong. The conclusion is irresistible that Captain Eggert did not go to Hongkong to engage assistance to salve the *Nippon*.

(4) The First Officer and those of the crew who went to Santa Cruz in the ship's boat "considered their lives (*i. e.*, of those still on board) in danger, and the ship a wreck, with little hope of saving her." (Rec. p. 21).

(5) When the Captain and crew left the *Nippon* for the *Manchuria* they removed the chronometer, the ship's register, ship's articles, ship's log, and as much of the crews' baggage as the small boat would carry (Rec. p. 146). The remainder of the baggage of the crew was all packed and standing on deck ready for removal, if possible. The *Mindoro* announced its intention to remove this baggage, and did remove it, without protest on the part of the Captain to leave it against their return or instructions to keep it at Manila against their return (Rec. p. 94).

(6) The S. S. *Manchuria* was equipped with wireless apparatus and was in communication with the shore where the insurers of the vessel and cargo were represented. Any captain temporarily deserting his vessel on an errand for assistance merely would take the pains to announce his purpose to the underwriters to avoid their working at cross purposes, duplicating expenses, and to cause them to assume charge and exercise control over his temporarily deserted ship. There was no such announcement of intention, and vessels proffered for that purpose were declined. (Letter of C. Defer, Rec. p. 25.)

To sum up, the evidence shows:

(*a*) That Captain Eggert left the *Nippon* with all the remaining members of his crew on May 13th.

(*b*) That Captain Eggert knowingly permitted the Captain of the *Manchuria*, without protest, to cable Manila that the *Nippon* was "abandoned."

(*c*) That he made no arrangements in Hongkong looking to the salvage of his vessel; that the persons of whom he says that he made inquiries regarding the possibility of such salvage were not produced as witnesses; that he refused to produce, when called upon to do so, the correspondence on the subject of salvage which passed between himself and his owners after his arrival at Hongkong.

THE FINDINGS AS TO ABANDONMENT.

Both the lower courts held upon the evidence that it had not been shown that at the time Captain Eggert left the *Nippon* there was any intention on his part of returning to the vessel to attempt her salvage, or for any other purpose.

The trial judge said (Rec. p. 215):

> At the time the plaintiff commenced the attempt to salve what was possible of the S. S. *Nippon* and cargo it was justified from all the conditions existing in believing that it had been abandoned and in taking possession, even though the master of the vessel intended when he left it to return and attempt salvage. Such intention, if it existed at all, does not appear to have been firmly fixed, considering the leisurely manner in which the master proceeded after he reached the port of Hongkong. Considering that the steamship was supposed to be *in extremis* and liable to become a total loss at any time, no one interested, neither the master, nor the owners of the ship or cargo, or the insurers, seemed to have thought that there was any hurry to make salvage and only took any positive steps in relation to salvage after the plaintiff had taken its chance and gone ahead.

The Supreme Court of the Philippines, referring to this finding of the trial judge said (Rec. p. 224):

> The evidence amply supports this finding.

On the same subject the Supreme Court of the Philippine Islands said (Rec. p. 229):

> From the above it will be seen that Captain Eggert had over two days in which to arrange for salvage operations and he did nothing, while the plaintiffs, who were strangers and had no interest, sent out a salvage expedition within twenty-four hours after they dicsovered the ship was wrecked. The evidence proves that the *Nippon* was in peril; that the Captain left in order to protect his life and the lives of his crew; that the *animo revertendi* was slight.

THE LAW AS TO DERELICTS AND THE RIGHT OF SALVORS TO TAKE AND RETAIN POSSESSION OF SUCH VESSELS.

It is not disputed that when the plaintiffs took possession of the *Nippon* for the purpose of attempting to salve her she was totally deserted.

Persons who take possession of an abandoned vessel *bona fides* for the purpose of salving her are entitled to retain possession for that purpose until their rightful claim for compensation shall have been satisfied or the vessel is taken into the custody of the law.

The *Ida L. Howard*, 1. Lowell (U. S. 2), 12 Fed. Cases No. 6999
The *Bee*, 3 Fed. Cases No. 1219
Hartshorn v. Twenty-five Cases of Silk, 11 Fed. Cases No. 6168
The Haverabad, 11 Fed Reps. 749
Norcross *v. The Laura*, 14 Wallace, 336.

Although in this case the evidence, direct and circumstantial, as to abandonment is so clear as to leave no room for doubt that the *Nippon* was technically a derelict when taken in charge by plaintiffs, it is by no means necessary that she should have been an absolute derelict to justify the possession of her salvors.

In the case of the *Island City*, 66 U. S. 121, it was held that the finders of a vessel apparently derelict have the right to bring her in and to be paid a liberal salvage even though it should afterwards appear that her crew had only gone for assistance and that she was not, therefore, a derelict.

See also:

The *Lockwood*, 37 Fed. 237
The *John Gilpin*, Fed. Cas. 7345
The *Adventure*, 8 Cranch, 227.

> When a vessel is a derelict the party first taking possession has a vested interest in the property, and no one can interfere with him, except in a case of manifest incompetency on his part.
>
> Parsons on Admiralty, p. 280.

It may be taken as established by the evidence that we are not here dealing with a vessel which has been boarded by salvors during the temporary absence ashore of the master and his crew, but with a vessel deserted by her master and crew to save their lives—not in the headlong haste of a catastrophe, but in the deliberation of a four days perilous sojourn on board the stranded vessel. This property thus left in imminent peril of total loss to its owners, without a keeper or preserver, was as fairly the subject of salvage services as such property could ever conceivably be. When volunteers, such as these plaintiffs, have undertaken to save a deserted property, like the *Nippon* and her cargo, and have assumed the risks of such service, it is not given to any one who may have profited by their example or become emboldened by their enterprise, to order them off or to appropriate to themselves the benefits of their undertaking. On the contrary, as the authorities put it, they have a vested interest in the property that their enterprise has placed under salvage and in the way of being rescued. Were it other-

wise—were such volunteers subject to summary ejectment at the beck and call of others, could their possession, legally commenced, be converted into a trespass by a mere statement of an intention to return on the part of the master not manifested by any perceptible conduct at the time, then such vessels would go begging for voluntary assistance, for assuredly no man would commit the folly of hazarding his own property and his own funds in the rescue of the property of another if, after he had blazed the trail and demonstrated the feasibility of the rescue, at his own risk and hazard of irretrievable loss if the venture be not a success, any other might oust him at will.

But even assuming, merely for the sake of the argument, that the *Nippon* was not strictly a derelict, and that the owners of the vessel and her cargo would have been entitled to resume possession, the possession of plaintiffs having commenced under conditions which fully justified them in regarding the ship as abandoned and as being a derelict, they could not be required to give up possession, even to the legal owners, without some assurance that their outlay would be refunded to them, and that they would be secure in the event that the efforts of the owners to effect salvage should prove to be a failure. No such security was offered them or even suggested.

The trial judge seemed to be of the opinion—not adopted by the appellate court—that the owners were entitled to resume possession at will, regardless of the intent with which they abandoned the vessel, but he says quite pertinently (Rec. p. 216), that this right could only be exercised—

> . . . upon satisfying plaintiff or guaranteeing to plaintiff satisfaction for the expense which they had incurred in connection with the salvage, whatever it might be, and the salvage which they were then entitled to. This, however, none of them did but contented themselves with making demands for pos-

session without arranging for compensating plaintiff for the salvage work already done, but only talked about it.

A vessel found at sea in a position of danger and without anyone of her crew on board of her is *prima facie* a derelict.

Kennedy, Law of Civil Salvage, page 55. Citing "The Cosmopolitan" 6 notes of Cases XVII.

Prima facie a vessel found at sea in a situation of peril, with no one aboard of her, is a derelict; but when the master and her crew leave such vessel, temporarily, without any intention of final abandonment, for the purpose of obtaining assistance, and with the intent to return and resume possession, she is not technically a derelict.

The *Shawmut*, 155 Fed. Rep. 476.

A vessel at least six miles from shore submerged from midships to bow, her running rigging overboard and snarled fast, her boat gone, her cabin, forecastle and galley full of water, a distress flag set, and deserted by her crew, who had left not signs of an intention to return and were nor visible, is *prima facie* derelict and abandoned.

The *Ann L. Lockwood*, 37 Fed. Rep. 237.

There is nothing in the record to overcome the strong presumption arising from the complete desertion of the vessel save the interested and self-serving declarations of the master, Eggert.

The question whether a vessel is or is not to be adjudged a derelict is decided by ascertaining, not what was actually the state of things when she was quitted by her master and crew, but what were their intention and their expectations when they quitted her. The vessel is not a derelict if she is left by her master and crew temporarily, for the purpose of procuring assistance, or with the disticnt intention of returning to her * * * . On the other hand,

> a deserted vessel is not the less a derelict because those who left her for the safety of their lives, and not for the purpose of getting assistance, meant if they could, to send a steamer to look for her; and if they intended at the time to leave her finally, a change of intention on their part, and an effort by them to regain her, are immaterial.
>
> Kennedy, Law of Civil Salvage, p. 55.

Setting aside for the moment, the present statements of Captain Eggert as a witness in this case concerning his efforts to arrange a salvage expedition at Hongkong, it will be found that there is not a single circumstance, or element, of whatsoever nature or kind, which tends to negative or overcome the presumption that the total desertion of the vessel was in obedience to her abandonment. On the other hand, we shall have immediate occasion to see that Captain Eggert's statements concerning his alleged activity in Hongkong are grossly insufficient to combat the fact of abandonment, especially in view of the multitude of facts and circumstances which confirm and demonstrate the abandonment.

The testimony of Captain Eggert does not successfully rebut the presumption of abandonment nor support the allegation of *animo revertendi et spes recuperandi.*

We have already seen that the question of abandonment is to be judged by the intention and expectation of the master and crew when they quitted the vessel.

The master frankly admits that they quitted the vessel for the safety of their lives, and not on an errand for assistance (Rec. p. 147).

And, more important still, when asked the direct question whether he did or did not "leave the *Nippon* with the intention of returning and the hope of recovering your ship and cargo," the witness is certain that he left with the "full intention of returning to the ship," but he

expressly and purposely evades the question concerning his then hope of recovery. And when his attention is directly called to his omission, he defines the hope he had as "slight" and says that he "was going to Hongkong and if he could find somebody that was willing to go out and look for the ship if the ship was still there," that he would undertake to salve her if he could. (Rec. p. 153 and 154.)

His real attitude of hopefulness of recovery, or rather lack thereof, is disclosed by his telegram to his principals from Hongkong on May 14th (Rec. p. 155), in which he tells his owners "probably total wreck—bottom seriously damaged—ship full of water * * * wreck on edge of reef—will probably slip off and sink by first gale."

And this confession is greatly augmented in force by the fact that the cables of Captain Eggert to his owner, which he admits to have sent respecting the wreck and the disposition of her crew (Rec. p. 154), are withheld by him on the ground that they cannot be of any assistance to him in showing that he intended to come back (Rec. p. 154). The presumption is (Code of Civil Procedure, Sec. 334, par. 5) that if the defendant's witness could be made to divulge the contents of the cables that he refuses to produce on the ground that they would not help him, that would demonstrate conclusively the abandonment that he strives to combat.

> It may be perfectly true that the master and these fifteen men when they had got on board of the *Young Frederick* and were sailing away to Yarmouth, intended, if possible, to employ steamers to go and rescue the vessel, which was at no great distance. But is not that the case every day? A master and crew abandon a vessel for the safety of their lives; he does not contemplate returning to use his own exertions, but the master hardly ever abandons a vessel on the coast without the intention, if he can

obtain assistance, to save his vessel. That does not take away from the legal character of derelict.

The *Laura*, 81 U. S. 344.
Quoting the *Coromandel*, 1 Swal. 208.
The *John Gilpin*, Olcott 78.
L'Esperance, 1 Dodson, 46.

It is well settled that a mere intention on the part of owners of a wrecked vessel to ultimately rescue her cannot prevent others from becoming salvors of the property or take from it the character of derelict. The reports abound in instances of the application of this doctrine where, under circumstances much less suggestive of the intent of the owner to abandon the property, salvage has been awarded to those who have voluntarily recovered it.

The *Burlington*, 73 Fed. 264.
The *Senator*, Fed. Cas. 12664.

This question of derelict vessels and goods at sea has been much discussed and there are many cases in the books upon the subject. I understand the modern doctrine to be that there must be not only a hope of recovery, which indeed the law will always presume, but some reasonable prospect that the hope may be realized to rebut the presumption arising from the conditions in which the goods are found. Where the peril is such as to force the abandonment of the ship, the mere intention to return and receover her if possible, will not prevent her being considered derelict.

The *Geproiana*, Fed. Cas. No. 5355.

POINT THREE

THE SERVICES OF PLAINTIFFS AS SALVORS WERE PROMPT, SKILLFUL AND EFFICIENT.

THE ISSUES PRESENTED BY THE PLEADINGS.

It is averred in plaintiffs' amended and supplementary complaint (Rec. p. 2), that notwithstanding the adverse conditions against which it was necessary to contend, plaintiffs promptly and diligently undertook and prosecuted the work of salving the *Nippon* and her cargo from her position of peril; that by reason of the constant and arduous efforts of plaintiffs the vessel was successfully floated and a large part of the cargo safely brought to land. It is averred further that the operations were difficult in the extreme because—

(*a*) The site of the stranding of said vessel is removed not less than 200 miles from the nearest base of supplies, rendering it necessary for all supplies and equipment, including fresh water for steaming purposes, to be sought and obtained at said distance from the scene of operations;

(*b*) The site of the stranding of said vessel is upon the high seas, rendering it necessary to conduct the salvage operations entirely from a floating base;

(*c*) The site of the salvage operations was in the open, exposed to wind and wave, rendering it necessary to employ vigilance and the services of additional vessels for the rescue, in stress of weather, of the lives of the numerous persons employed in said salvage operations;

(*d*) The cargo of said stranded vessel consisted largely of copra in bulk, which mingled with the waters of the sea, fermented and produced in the holds of the vessel noxious gases and vapors which oppressed and impeded the labors and activities of the salvors.

The defendant, Oelwerke Teutonia, by its answer, denied all these averments of plaintiffs' complaint, saving the averment that the *Nippon* was floated and that a portion of her cargo was brought to Manila (Rec. pp. 10 to 15 inclusive); and by way of defense and counterclaim alleged that plaintiffs were without the requisite knowledge or adequate means properly to perform the salvage operations undertaken by them; that plaintiffs, by reason of their ignorance, incompetence, negilgence, and inadequate means, and over-caution for the safety of the ships employed in the salvage work, only saved 1,296.36 tons of the copra, of the value of only ₱136,737.06; that had plaintiffs proceeded with due care and diligence, and had they possessed the ordinary skill and knowledge necessary in the performance of the salvage services, the entire cargo of the *Nippon* would have been taken off her and salved by June 1, 1913, in good marketable condition, and would have been worth ₱324,169.00; that, by reason of their negligence and ignorance, plaintiffs failed to salve 545.92 tons of copra of the value of ₱118,395.00 which was wholly lost.

While the work of salvage was in progress defendant and its agents tried to make it appear to the Government that the methods being used were defective, and that for that reason the charters of the government vessels being used by plaintiffs should be revoked. So persistent were these representations that the Governor General of the Philippine Islands, on June 12th, 1913, by Executive Order No. 39 (Rec. p. 26), appointed a committee, composed of the Director of Navigation, the Assistant Director of Navigation, an official of the Atlantic, Gulf, & Pacific Company, the Surveyor of Hulls and Boilers of the Philippine Customs service, and Mr. J. T. Breckwold, a marine surveyor, of Hamburg, who was in Manila on behalf of defendants (Rec. p. 170)—

> to investigate of salving from the wreck of the S. S. *Nippon* * * * .

The committee was directed to report its findings to the Governor General at the earliest possible date.

On June 17th, 1913, the committee rendered its report (Rec. p. 27), which was concurred in by all of its members, with the exception of Mr. Breckwold, who declined to participate in the inquiries or deliberations of the committee, or accompany the other members on their trip of inspection to Scarborough Reef. The report of the committee, the full text of which is included in our Exhibit B (Rec. pp. 27 to 30) gives a comprehensive summary of the progress made by plaintiffs at that time, the methods employed, and the difficulties which they were encountering. The conclusions of the committee were expressed as follows:

> In conclusion your committee wishes to state that we believe that the work is progressing satisfactorily and that the salvors, while not extravagant, are sparing no expense in furnishing all the supplies and equipment necessary for the successful completion of the work.

The report of this committee is included in our Exhibit B, and under the stipulation upon which it was admitted—the purpose of which was to save time in the production of the evidence—(Rec. p. 18) the statements of fact therein contained are entitled to the same weight as they would have had if given in court under oath by the officials by whom the report is signed.

THE FINDINGS AS TO SKILL AND DILIGENCE.

The issue as to the skill and diligence of plaintiffs in the salvage work was decided in both of the lower courts adversely to the defendant. The trial judge in his decision (Rec. p. 216) says:

> It does not appear form the evidence that anybody then or subsequently suggested or found any other course which might have been pursued and which might have brought better results.

The Supreme Court of the Philippine Islands in its decision (Rec. p. 233) says on this subject:

> The plaintiffs were diligent in commencing the work and were careful and efficient in its pursuit and conclusion.

It is submitted that the evidence fully sustains these conclusions and demonstrates conclusively that the work was done with promptitude, skill and courage; that every means which ample capital could command were employed in the operations, and that they were successful.

THE CONDITIONS UNDER WHICH THE WORK WAS ACCOMPLISHED.

Scarborough Reef on which the *Nippon* stranded is an isolated rock wholly submerged except at low tide, two hundred miles away from the nearest port. It lies right in the path of the tremendous wind storms which have made the China Sea a terror to mariners and which are ordinarily to be expected in the months of May and June. (Exhibit A, Par. 6, Rec. p. 17.)

On this reef the *Nippon* was impaled. Through the gaping holes in the bottom of the vessel the water rose and fell in her holds with the movement of the tides. Her cargo of copra, which occupied practically all of her hold space was stowed in bulk with a layer of sacked copra on top to keep the loose cargo from shifting. At normal tide the depth of water in the holds of the vessel was about fifteen feet, and at high tide, about twenty feet.

Testimony of Taylor (Rec. p. 79).

The result was that there was a layer of sacked copra and some bulk copra which was above the level of high

water, perfectly dry; a layer below which was alternately submerged and exposed with the rise and fall of the tide; and a lower stratum constantly below the level of low tide and constantly submerged.

The month of May is the hottest of the year in the vicinity of Luzon, and the temperature in the holds of the *Nippon* rose to a teriffic degree. The effect of the salt water and the heat on the wet copra was to set up a fermentation which released noxious gases in which it was impossible almost for men to work. The decaying copra in the lower stratum produced an acid which made the water in the holds almost vitriolic in its effect on the men coming into contact with it.

Testimony of Taylor (Rec. p. 81).
Testimony of Dr. Pratt (Rec. p. 132).
Testimony of Anderson (Rec. p. 96).
Testimony of Rutledge (Rec. p. 105).

The testimony of our witnesses Taylor, Pratt, Anderson and Bailey as to the conditions of the *Nippon* is fully supported by the testimony of defendant's witnesses Robinson (Rec. p. 202) and Bailey (Rec. p. 192) as to their own observations elsewhere of the unbearable stench and noxious acids and gases produced by the action of salt water on copra.

All of the operations had to be conducted from a floating base as the reef afforded no foothold, the situation of the vessel being such that she was in danger of (Rec. p. 81) slipping off the reef into deep water should a storm arise—which at that time of the year was to be expected at any moment. Consequently it was necessary to have a ship at hand day and night during the entire course of the salvage operations ready to take the men off the *Nippon* should an emergency arise.

THE PROMPITUDE WITH WHICH PLAINTIFFS COMMENCED WORK.

The *Nippon* stranded on the 9th day of May. The news of her abandonment by her officers and crew reached Manila on May 13th in the form of a wireless message from the Captain of the *Manchuria* (Exhibit B, Rec. p. 224). This wireless was published in the *Manila Times* of the afternoon of May 13th and upon reading it, plaintiffs formed the determination of undertaking the salvage of the abandoned vessel and her cargo.

Testimony of Reis (Rec. p. 44).

That same afternoon the plaintiffs arranged with the Director of Navigation of the Philippine Government for the charter of the Cutter *Mindoro*, to take effect immediately upon her return from the scene of the wreck, where it had been sent by the Insular Government for the purpose of rendering such assistance as might be required. The *Mindoro* arrived in the Port of Manila on the afternoon of May 14, 1913, and the same night she left the Bay under charter of the plaintiffs with men and appliances to be used in the work of salvage.

Testimony of Ben Taylor (Rec. p. 78).

These men went on board the *Nippon* about 10.00 o'clock a. m. on the 15th day of May (Rec. p. 78) and the *Mindoro* at once returned to Manila and took on additional men and equipment with which she went back to Scarborough Reef May 17th, on which date the actual work of salving the copra was commenced under the direction of Mr. Taylor, an old and experienced stevedore (Rec. p. 75). From that time on the work of taking the copra out of the vessel was prosecuted with the utmost diligence and with all the appliances and men that money and energy could supply.

It was contended in the courts below on the behalf of the defendant, Oelwerke Teutonia, that the work could have been prosecuted to better advantage from Hongkong. This position on the part of defendant was practically forced upon it by reason of the fact that Captain Eggert had seen fit to go to Hongkong on the *Manchuria* on leaving the wreck, instead of availing himself of the opportunity of returning to Manila, equally open to him by the presence of the Coast Guard Cutter *Mindoro* at Scarborough Reef when he left his vessel. We have already shown that the Captain did not display any energy whatever—taking his testimony at its face value—in his alleged efforts to obtain assistance in Hongkong. It is shown conclusively that up to the 17th day of May he had made no arrangements whatever regarding its salvage (Rec. p. 144).

Now, if we assume arbitrarily that if the Captain had not heard, on May 17th, that someone had taken possession of the *Nippon* for the purpose of salving her, he would have made a contract that same day with someone in Hongkong to undertake the operation, and an expedition had been started for the wreck on the following day, such an expedition could not, by any possibility, have reached the reef before May 20th, which was three days after the plaintiffs had commenced the work of removing the cargo, for the evidence shows (Rec. p. 95) that by the evening of the 17th they had already taken 675 sacks of dry copra off the *Nippon*, and on the afternoon of May 19th, the earliest date at which any Hongkong wreckers could have reached the wreck, the first shipload of 69,418 kilos of the salved copra was brought into Manila Bay by plaintiffs on the *Mindoro* (Rec. p. 95).

But as a matter of fact, the testimony of defendant's own witnesses shows that it would have been impossible to have started the expedition in twenty-four hours.

Captain Bailey, a witness produced on behalf of the defendant, Oelwerke Teutonia, testified that he was familiar with the wrecking facilities available in the port of Hongkong and that it would have taken fully two days to get either of the available wrecking tugs ready for sea and away.

Testimony of Bailey (Rec. p. 197).

Nor is there any evidence to justify the conclusion that anyone in Manila acting on behalf of the owners of the cargo would have, or could have, commenced the work any sooner than plaintiffs, or conducted the operations with any greater celerity. The first information received in Manila regarding the wreck of the *Nippon* came on May 12th in the from of a telegram from the mate, Westin, (Rec. p. 219), who had reached Santa Cruz, Zambales, on the Island of Luzon with part of the crew of the *Nippon* and had telegraphed the facts to the Director of Navigation. The news was made public the same day (Rec. p. 44) and was formally communicated to a member of the firm of Struckman & Company, in Manila—this firm having acted as the agent for the *Nippon* while loading in Manila. So far as the record discloses, no effort was made by Struckman & Company to get a boat to go to the wreck until the following day, the 14th, when, as testified by Mr. Stroebel, of Struckman & Company, he tried to charter a boat to go out to the reef. (Testimony of Stroebel, Rec. p. 210). He says that he could have obtained the steamer *Viscaya* form Inchausty & Company, of Manila, but he "*thought the vessel was too big.*" This was on the morning of the 14th. After looking around for a cheaper vessel Mr. Stroebel decided that he would take the *Viscaya*, but on indicating to Messrs. Inchausty & Company his willingness to do so was informed by them that in the meantime the vessel had been chartered by

Messrs. Erlanger & Galinger (Testimony of Mr. Stroebel, Rec. p. 210). Mr. Stroebel then wrote to the Director of Navigation (Rec. p. 21) asking to be informed of the report of the Captain of the *Mindoro* as soon as the vessel should arrive on the afternoon of that day. It will be noted that this letter says nothing about any desire on the part of Messrs. Struckman & Company to charter the *Mindoro* or any other Government vessel. It does not appear what Mr. Stroebel did the rest of the day after being informed at 10.00 a. m. by Messrs. Inchausty & Company that the *Viscaya* was no longer available. But about 9.00 o'clock in the evening (Rec. p. 207) Mr. Stroebel went to the house of the Director of Navigation but was informed that the vessel had been chartered to Erlanger & Galinger "and had gone out already." Their letter requesting the charter was written May 14th (Exhibit B, Rec. p. 20).

Now Struckman & Company say that they were the agents of the owners of the cargo and were also the agents of the underwriters of the hull of the *Nippon* (Rec. p. 206). The telegram from the mate to the effect that the *Nippon* was stranded and her crew in danger was sent from Santa Cruz Zambales at 12.15 p. m. on May 12th (Exhibit B, Rec. p. 224). It was made public in Manila that afternoon. Nevertheless the agents made no effort to get a vessel with which to go out to the wreck until the 14th. It was not until 3.00 or 4.00 o'clock in the afternoon of that day that Erlanger & Galinger asked for a charter of the *Mindoro* and it was not until 9.00 p. m. of that day that Mr. Stroebel tried to get her, so that it clearly appears that he and his firm wasted three whole days before trying to do anything. If they had been wide awake and really desired to undertake the salvage of the vessel they would have had a steamer chartered for that purpose before midnight of the 12th. Even if

they had succeeded in chartering the *Mindoro* and had sent her out to the *Nippon* on the morning of the 15th—which would have been brisk work, as they only tried to get her on the night of the 14th, notwithstanding the fact that the wireless from Captain Dixon of the *Manchuria* (Exhibit B, Rec. p. 224) to the effect that the crew had been taken off and the vessel abandoned, was made public in Manila on the afternoon of the 13th—they would not have been able to commence work any sooner than did the plaintiffs. Such belated and spasmodic activity as Struckman & Company did display in the matter is, however, of significance in that it shows that they had no knowledge of the alleged efforts on the part of Captain Eggert to obtain salvage appliances in Hongkong or of his alleged intention to conduct salvage operations from that point. If such were indeed his purpose it would seem natural that he should have communicated it to the Manila agents of his owners. This he obviously failed to do, for the record shows that the same day, after Erlanger & Galinger had commenced work, and while Captain Eggert was still in Hongkong, Struckman & Company continued to talk about their desire to undertake the salvage work from Manila. (Rec. p. 210.) However, when they were definitely offered the charter of a Government vessel early on the morning of May 21st, after taking the matter under consideration until four in the afternoon, they finally declined to accept the charter upon the ground that—

> they had not been able to get orders from the underwriters.

This appears in the report of Mr. Thompson to the Director of Navigation, embodied in our Exhibit B, (Rec p. 26), which was introduced into evidence under stipulation in open court (Rec. p. 18)—

that the statements contained therein be considered by the Court with the same effect as though the persons by whom the letters and telegrams composing said correspondence are signed had appeared in court and testified to the facts therein set forth under oath.

SALVAGE FACILITIES IN HONGKONG AND MANILA.

It is averred in the answer of the defendant, Oelwerke Teutonia, that the facilities for the salvage of the *Nippon* and her cargo obtainable in Hongkong were superior to those obtainable in Manila (Rec. p. 13). Now, apart from the fact, which we have demonstrated (*ante* p. 34), that had the work been attempted with Hongkong as a base of operations it would not have been possible to have commenced until days after plaintiffs actually began taking out the copra, the evidence shows conclusively that the work could not have been done as advantageously with Hongkong as a base as it was in fact done by working from Manila.

Captain Eggert, the master of the *Nippon*, testifying, in reply to the question as to why he went to Hongkong on the *Manchuria*, instead of returning to Manila on the *Mindoro* as he had an opportunity to do, said:

> I went to Hongkong because I knew that I could have anything to help me to salve the steamer, and I knew that in comparison to Manila there was very slight means in Manila for work of that class and in Hongkong I knew all the stores that were able to undertake work like that.
>
> Testimony of Captain Eggert (Rec. p. 143).

One would think, in reading this, that Captain Eggert had the choice, when he left the *Nippon*, of going wherever he might see fit. The fact was that he got on the *Manchuria* because she was the first vessel to come along. The real purpose with which he left the ship is more accurately shown by the following excerpt from his testimony:

Q. Captain, if your purpose in leaving the *Nippon* was to go to Hongkong for the purpose of arranging for her salvage why did you not leave some of your crew on board?

A. * * * There could be a gale at any time and the ship would have slipped off and broken to pieces.

Q. Then all the souls on board the *Nippon* left for the purpose of saving their lives?

A. Absolutely.

(Rec. p. 151).

So far as equipment necessary for removing the copra is concerned, Captain Eggert did not expect to get anything in Hongkong which was particularly rare in Manila, for upon being asked what he deemed would be the proper equipment to use for the purpose, he said:

> By ordinary equipment I would mean sufficient lighters or boats to take the stuff. Secondly, four gangs of men of sufficient numbers; one pump in each hold to keep the water level far enough down while the copra was discharged; and baskets, or big tubs, or anything like that.
>
> *Q.* That is your opinion of what would be suitable equipment?
>
> *A.* I think that would be suitable.
>
> Deposition of Captain Eggert (Rec. p. 151).

The equipment and methods which Captain Eggert thinks should have been used are precisely those actually employed by plaintiff. Captain Eggert does not attempt to inform us wherein Hongkong has the advantage over Manila which he assumes it to possess in the matter of "lighters, baskets and big tubs," and the fact that he was there three days trying to make arrangements for the work to be done, but without success, would seem to indicate that the advantages of Hongkong are more imaginary than real.

The witness Lebreton, called by defendant, testifies that although plenty of labor could be obtained in Hongkong and that in his judgment Chinese laborers are better than Filipino laborers to the extent of three Filipinos being necessary to equal one Chinaman, *he would nevertheless have used Manila as a base of operations* and would have obtained his transportation here. He does not state positively that he would have attempted to get laborers in Hongkong. Mr. Lebreton's ideas on the subject of what could be done in Hongkong are, as shown by his own statements, entirely theoretical. He testifies on the subject as follows:

> *Q.* Do you consider it feasible, Mr. Lebreton, to conduct a salvage operation on Scarborough Reef with Hongkong as a base of supplies?
>
> *A.* If you take the time, yes, certainly.
>
> *Q.* How many hours sailing is Scarborough Reef from the Port of Hongkong?
>
> *A.* About 40 hours, I don't know exactly.
>
> *Q.* And do you think that 40 hours sailing from Scarborough Reef to the Port of Hongkong would be a fairly safe and sane journey with scows loaded with copra?
>
> *A.* No, I don't say that.
>
> *Q.* Then what do you say?
>
> *A.* The men could be brought from Hongkong with the pumps and gear and landed on the *Nippon*. You could very easily get a boat from Hongkong to bring the men. There are many boats sailing from Hongkong to Manila and it will be easy to bring the men over. And lighters, or even coastguard steamers could be chartered for the delivery of the cargo.
>
> *Q.* Then you would not have gotten your steamers and lighters from Hongkong?
>
> *A.* No, it would not be necessary.
>
> *Q.* Have you had any experience unloading copra in bulk?
>
> *A.* No.

Q. Have you had any experience in handling copra that is partially damaged and partially undamaged in the hold of a ship?

A. No.

Deposition of Lebreton (Rec. p. 183).

The witness, Captain C. S. Robinson, called by defendant, is a man of wide experience as a salvor, particularly in the waters of the Philippine Islands. He testified positively that if he had been in charge of the work of salving the *Nippon* he would not have attempted to make Hongkong the base of operations. His testimony on the subject is as follows:

Q. Assuming that you had been asked to undertake the work of salving the steamer *Nippon* and her cargo, please state whether or not you would have undertaken that work with the men and material available in Manila, or whether you would have gone to Hongkong and used Hongkong men and material and made Hongkong your base of operations?

A. Certainly not. I would have Manila my base, which I have always done.

Q. What, if any, advantages do you think that you would have in using Manila as a base of operations and using Manila men and materials over men and materials of Hongkong?

A. In the first place you would lose a lot of time by going around to Hongkong to get those men. That is time lost.

Q. Even if you had been using Chinese labor from Hongkong to remove the cargo from the hold of the *Nippon*, would you have used Hongkong or Manila as your base of operations?

A. I would use Manila. * * * To work from Hongkong and take the cargo to Hongkong you were quite liable to lose your lighters. You have got at least four days of a tow to go to Hongkong, where here you have only 180 miles.

Deposition of Capt. Robinson (Rec. p. 200).

Q. What do you know of the means available in Hongkong for salvage purposes?

A. Well, there is any amount of lighters in Hongkong, but I doubt if they would risk their lighters to go all the way across to Scarborough Reef—600 miles—to work that ship—in the China Sea.

Q. Are there salvage steamers there especially built for salvage purposes?

A. There was one called the *Protector* but she was up in the Persian Gulf.

Q. Are there seagoing tugs for salvage purposes?

A. Yes.

Q. What about the labor market in Hongkong for salvage purposes?

A. I don't know anything about that because I have never taken any labor from Hongkong for that purpose. But there are plenty of men in Hongkong. Whether they would go to Scarborough Reef or not I can't tell you.

Q. But if they would go there, would they be good laborers—those to be had there?

A. Yes you could get good laborers in Hongkong.

Q. And in any quantity necessary?

A. So far as I know. In this instance I don't know if they could be kept at work right through the conditions with the stench. I do not know if it would allow the men to work. That is the thing I am up against, and have been up against, with the *San Juan*, which is a very small boat. I have had four men almost suffocated from wet copra.

Q. What *San Juan* are you talking about?

A. The one I am bringing up now.

Deposition of Capt. Robinson (Rec. p. 199).

It appears, therefore, that only one of the three witnesses who were called by the defendant for the purpose of expressing an opinion on the subject of the feasibility of using Hongkong as a basis of operations for the salvage of the *Nippon*—only one of them, Capt. Eggert—has contended that he would have worked from that base. He admits,

however, that he has never had any experience whatever in this line of work, and the fact that the did not succeed in making any arrangements in Hongkong for the work during the time he was there endeavoring to do so, is sufficient to show that his theory was incorrect. Of the other two witnesses Mr. Lebreton was inclined to think that he would have brought laborers from Hongkong but would have obtained his transportation in Manila. Mr. Lebreton admits that he has never had any experience in this particular kind of work. On the other hand, Capt. Robinson, the only man called who really has any experience in the matter to justify him in venturing an opinion, states positively that he would not have thought of attempting the work from Hongkong because of the difficulties resulting from the distance between that port and Scarborough Reef. It is submitted that the evidence abundantly justifies the conclusion that no advantage would have accrued from using Hongkong as a base of operations, but that it would have been a serious error to have attempted to work from that place.

THE METHODS EMPLOYED BY PLAINTIFFS.

The objects to be accomplished by plaintiffs were twofold: The salvage of the stranded vessel, and as much of the cargo as could be taken off in a marketable condition. Had the plaintiffs devoted their entire attention to the salvage of the hull—which, under the circumstances, they would have been justified in doing—it would have been immensely to their advantage to have expedited the operation by the jettison of the cargo as rapidly as possible. It was necessary to get the cargo out of the ship before divers could make the necessary temporary repairs to enable the salvors to float the vessel (Rec. 105). Every day that was lost in taking cargo out of the ship increased the danger, to which the venture was ex-

posed, of the total loss of the *Nippon*, which must have resulted had bad weather occurred, which there was every reason to expect at that time of the year. Nevertheless, plaintiffs assumed that risk and devoted time and energy to the salvage of the cargo which might have been employed far more profitably to them in simply getting it out of the way as rapidly as possible, with the sole view of salving the hull. Briefly, the method adopted by plaintiffs was first to remove the layer of dry sacked copra on top of the bulk cargo, then to sack the dry layer of bulk copra above the high-water mark, and then to remove as much of the wet copra as could be taken out in a marketable condition. To the accomplishment of this purpose they worked with energy and with every appliance which money could command or ingenuity devise. All the dry copra was taken out of the vessel and the last lot of it landed in Manila by June 5th (Testimony of Ferrier, Rec. p. 68), which was five days less than the defendant's expert witness (Captain Robinson) thought would have been necessary for the accomplishment of that part of the work (Rec. p. 199). The last lot of wet copra—except a small quantity still in the ship when she was floated—was landed in Manila June 24. (Rec. p. 68).

To read the testimony of Captain Eggert and Captain Breckwold one would be inclined to think that to take a festering mass of copra out of a stranded vessel on a coral reef two hundred miles from shore is as simple and easy a process as running wheat from a ship into a grain elevator. But the story of the difficulties actually encountered and overcome by the men who endured the dangers and hardships of the undertaking so successfully accomplished by them is very different, and any one who reads it will of necessity come to the conclusion that they lost not a minute of time unavoidably and that no one could have done more than they did. The difficulties which they had

to overcome and which made the task of removing the copra from the hold of the *Nippon* so difficult and dangerous were largely due to the peril of life which had to be faced by the men who went into those smothering fumes to work in the steaming heat of the hold of the stranded ship. The men themselves told the story in the most graphic way possible and we cannot do better than to reproduce it here as they related it.

The initial difficulty to be overcome was to induce the laborers to go out to work on the *Nippon*. To enlist them in this particular the plaintiffs engaged the services of Mr. Simmie, an experienced contractor and stevedore. Mr. Simmie says (Rec. p. 69), that when he was first called upon by Messrs. Erlanger & Galinger to assist them in obtaining laborers to go out to the *Nippon* during the month of May, there was a great scarcity of labor in Manila, owing to the fact that the Quartermaster Department of the Army at that time was engaged in moving a large number of troops and supplies; that the ordinary pay for laborers who work in the holds of vessels in Manila is ₱1.00 per day, without subsistence, which is less than half of what plaintiffs had to pay the men they used on the *Nippon* (Rec. p. 48). As to the effect of the work on the laborers, Mr. Simmie says (Rec. p. 70) that he saw a great number of them when they came back from the wreck and that—

> their eyes and faces were swollen up, their eyes were sore and watery, and they had spots on their legs, and they all claimed that it was sure death to go back there again, and I had hard work to replace the crews as they came back from there. These men who returned would tell their friends what a bad place it was to work and you had to get a new outfit every time.

Mr. Simmie was then asked about what proportion of the men sent out by him remained on the *Nippon* for more

more than one trip of the conveying vessel, to which (Rec. p. 70) he replied:

> less than half of them. Sometimes almost the entire crew that was sent out would come back on the same boat they went out on.

In order to overcome these difficulties, Mr. Simmie (Rec. p. 70) says:

> We had to give them more money. We promised them that there would always be a boat standing by there at the wreck in case of any accident or danger, and that they would be properly fed while out there; they seemed to be afraid that when they got out there they would be forced to go down into the hold and work and we had to promise them that if they were sick or their eyes got bad, or anything, they would not be driven down into the hold to work. We had to make them all kinds of promises and arguments to get them to go out there at all.

Mr. Ben Taylor, the first man sent out to take charge of the stranded vessel, and who remained with her to the end, testified as follows (Rec. pp. 81 to 82) with respect to the difficulties encountered in emoving the copra from the hold of the *Nippon*.

> *Q.* Did you have any difficulty in keeping the men out there on the work?
>
> *A.* That was the whole thing out there, I should say, the whole trouble out there. The men couldn't work down there and wouldn't work; they would go down in the hold and stay a little while and they would complain that they got the headache and their eyes would get sore and their legs itch. That was the whole thing, if you could get the men it wouldn't be so much of a job.
>
> *Q.* About how long a time would each shift stay below decks?
>
> *A.* One hour, an hour and a half, some of them stayed two hours at most, it was so terrific they couldn't stand it and the gas was tremendous.

Q. Was this condition as bad while you were working on the dry copra as when you got through the dry copra and into that which was wet?

A. Not quite so bad, but of course, the tremendous heat and the gases were there just the same; you couldn't stand it down there, the fumes were horrible.

Q. Did you notice anything abnormal in regard to the temperature down there?

A. Yes, it was over one hundred degrees.

Q. At what time of day?

A. All the time, this heat and fumes were coming from the copra all the time, the heat in the hold was terrific all the time, you simply couldn't stand it.

Q. Please state, Mr. Taylor, from your own observation what was the effect of this heat and these fumes or gases from the copra upon the men.

A. It turned the men sick in the stomach and their eyes would begin to run, we tried to tell the men not to wipe their eyes but they couldn't keep from it and the result was, in a few minutes, in half an hour or an hour they would be absolutely blind, and then they got sores on their bodies and on the legs and their faces would swell up; that was the whole trouble, the men couldn't stand it to work in there.

Q. Did you suffer at all on account of the heat and the fumes from the copra?

A. I did, yes, sir, I was sick at the stomach and my eyes were bad, you would get the fumes from the stuff and your eyes would begin to run and you would have to rub them. I was using boric acid on my eyes all the time and when I didn't have the boric acid I used cold tea.

Q. Please state whether any of the men were asphyxiated or became unconscious while working in the holds there?

A. Yes, sir, one or two.

Q. Did these men seem to have anything the matter with them after working in the holds on this copra?

A. Yes, sir, most of them got swollen testicles, there legs were all inflamed and burned with this

copra, the acid from the copra, they would get the headache and the stomach ache and their eyes would run, it was tremendous the heat and the fumes down in there.

Q. About how long on the average would each man stay out there at the ship?

A. One trip: they would go out today and then come back on the same boat, some of the men you couldn't get to go down in the hold more than once, and of course when a man was sick you couldn't make him do it.

Q. What inducements did you make these men to keep them out there on the ship?

A. All kinds of inducements, anything I had on the ship; I gave them five meals a day; they had the ship's stores to take anything they wanted, they had all my stores, anything they wanted, I even gave them wine to drink; we were offering them anything we had to keep them out there.

Q. Did you have any medicine on board the boat?

A. Yes, sir, but it was printed in Swedish on the cases and we were afraid to tackle it.

Q. But you could drink the wine without being able to read Swedish. Did Messrs. Erlander & Galinger furnish you with any supplies and medicines?

A. Yes, sir, and they sent a doctor out from the Bureau of Navigation with all kinds of supplies and medicines, and that was surely a godsend for us too.

Captain Anderson of the *Mindoro*, who left the Government service and entered the employment of Erlanger & Galinger to take charge of the salvage operations on the *Nippon* on and after May 27th, testified (Rec. pp. 95 to 97) as follows:

Q. What was being done when you got out there?

A. Well, the conditions were that there was not much done, it was rather discouraging, the people could not work, or would not work in the holds.

Q. Why wouldn't they work?

A. The men would go down there, even when they were working in the dry copra—it was practically all dry copra in the hatches and even back under the hatches for quite a ways, and were working on that at first—they would be down there for an hour or so and would come up with their eyes running and practically blind and their testicles swollen, and make a run for the salt water, and after we got down to the second strata, the half dry copra, it was even worse, the men would get this water from the copra on them and they couldn't stand it.

Q. What did you do to keep the men out there, if anything?

A. When I went out there I brought 120 men with me, I think.

Q. And did they as a matter of fact come back to Manila?

A. There were only about twenty-seven of them that didn't come back and it left only about thirty or forty men with the divers.

Q. What methods did you use, Captain, for moving the cargo after you went out there and took charge?

A. Every method that could possibly be applied. We tried to use all the men we could get all the time. We had the men working in shifts and working in all three holds at the same time. We used a big lighter to hold the copra from No. 3 and No. 4 holds and the other we stowed on deck so it could dry out a little; we did this so we could keep three gangs working at one time without one man ever being in the road of another. I also had so many men tolled off for relief force so that as soon as a man got so sick down there he couldn't stand it and came up and jumped overboard for the salt water there would be another one ready to go down there and take his place. We did everything we possibly could with the men; we had to keep the thing going.

Q. Were you able to work at night at all?

A. We worked at night after we got down to the second strata if it was high water in the day time; we couldn't work it at all in high water after we got

down to this second strata; and we were trying to save as much of this half dry copra as we could.

* * * * * * *

Q. How long were you engaged in this work of removing the copra of the second strata?

A. We were engaged on that about nine days, but during that time we had to have the men standing on platforms, plank platforms, and one day one of the men happened to slip off the platform and I just got him in time, I happened to be right there and I just grabbed him by the hair in time and pulled him out, and then we had to stop even with the platforms and could only work at low water. Then after we got about so much of this second strata out, it was impossible to get any more; the men couldn't stand it down there, they would go down and stay a little while and they would come up with their eyes swollen so that they were blind, their skin all broken out and their testicles swollen up, and if one of them slipped off the platform he would have died on the spot; they would get so sick we were afraid they would get unconscious and fall off. Of course, we put life lines on those in the most dangerous positions, but that was only in the day time, we couldn't send the men down in there to work at night, and back under the wings after it got down a little ways we were afraid to send them in there for fear they would fall off and be dead before we could get them out. You would have to have some good insurance policies first if you want to send them in there.

Q. How soon did you notice the evil effect of the gases?

A. Why it was there from the first, it got more severe every day but it was there the first time I boarded her.

Q. Did it affect you at all?

A. It sure did.

Q. What did you notice yourself.

A. I noticed—I went down in No. 2 one day where there were some things I wanted to see about and there was no copra in there and my eyes got so bad—I was only down there for about an hour—I had to

be led up on deck. I got a drop of the water in my eye and rubbed it a little and my eye swelled up so I couldn't see a thing.

Mr. Rutledge, the engineer who had charge of the diving operations connected with the salvage of the *Nippon* also testified as to the difficulties arising from the overpowering smells from the rotting copra as follows:

Q. What, if anything, did you observe while you were out there as the effect on the laborers of the fumes from the copra?

A. The most serious effect was on their eyes.

Q. Did you yourself experience any discomfort on account of the presence of those fumes in the boat?

A. One occassion that was serious my eyes were closed. At all times your eyes were under a smarting sensation and watering, but by the use of medicine we managed to hold out.

* * * * * * *

Q. Did you notice anything out of the ordinary in the character of the water entering into the engine-room from the holds?

A. Filled with acid and of a whitish copra color.

Q. Did you notice any effects of the acid on the persons who came into contact with the contaminated water?

A. Very much so, myself in particular.

Q. What was the effect?

A. Smarting of the flesh. It turned my flesh black in several spots.

Q. Did you observe it had the same effect on other people there?

A. Couldn't tell on the natives. I know it smarted them considerable, because when they would come up they immediately ran down to the salt water to wash off. Their testicles would swell.

Q. How soon after coming in contact with this contaminated water from the copra holds would you observe this smarting effect?

A. It would act differently on different people. Some would not stay down over 5 or 10 minutes.

It didn't seem to act quickly on me because I did not stay in so long as they did.

Q. Did it have any permanent ill effect on you?

A. For a couple of months these black spots remained on my limbs.

Defendant's witness, C. S. Robinson (Rec. p. 198) testified that he was, at the time of giving his deposition, engaged in salvage work on the steamer *San Juan*, part of the cargo of which was copra submerged in salt water in the hold of the vessel. On this subject Captain Robinson testified (Rec. p. 201) as follows:

Q. Was there some copra cargo in her?

A. 100 tons.

Q. Was that wet with salt water?

A. Certainly, it was completely submerged.

Q. What effect have you noticed the salt water had on that?

A. It is unbearable. We can't get down the No. 2 hatch yet. I have had four men almost suffocated—stretched out and almost suffocated. We had to bring them ashore.

Q. How did the stench or the fumes of the copra affect them?

A. They faint right off and are perfectly helpless.

Dr. D. S. Pratt, an experienced chemist of the Philippine Bureau of Science, testified that he had visited the *Nippon* while she was on the reef (Rec. p. 127); that he tested the air in the hold at that time and found a high percentage of hydrogen sulphate; that this was not only to be found in the hold of the vessel, but was noticeable some distance from the vessel in the open sea; that hydrogen sulphate is a poisonous gas and will cause death if taken in sufficient quantity. The witness testified that while on the *Nippon* he observed the effect of the fumes from the copra upon the men who were at work there; that the men who had been working down in the copra were rendered partly

unconscious by the gas and complained of giddiness and loss of consciousness; that the witness himself experienced the same effect although to a less degree (Rec. p. 132). That in addition to the gases released by the action of bacteria on the copra acids were produced and that the effect of these acids would have a corrosive effect upon the skin of a person coming in contact with the water containing it (Rec. p. 132).

Dr. Pratt testifies that he had occasion to observe the effect of this corrosive action upon the skins of persons working in the vessel and testifies (Rec. p. 132) as follows in this respect:

> The workmen who had been exposed to this water showed irritation of the skin, in some instances even approaching actual burning of the skin. They also showed enlargement of the parts coming in contact with the water, swelling and inflammation of the eyes, both from water getting into them and from gases coming in contact with the eyes.

It is respectfully submitted that the evidence shows beyond a doubt that no time whatever was lost by plaintiff in salving the copra cargo, and that there is nothing which could have been done by anyone to have accomplished it more rapidly. The men in charge of the work were all able seamen, they had everything to aid them in their work which money could buy, a fleet of steamers ready to transport the copra to Manila as fast as it could be taken out. But there is a limit to what flesh and blood can endure. Money will not buy human life. If Captain Robinson, or Captain Bailey, or Captain Hessell had been in charge, the men they would have used would have been no more immune to the hydrogen sulphide gas and the acidulated waters than were ours.

No little adverse criticism of the methods employed by plaintiffs was leveled at them by defendant's represen-

tatives. The plan employed, after the sacked copra was removed was to build a raft of planking from which the men could reach the copra with shovels and put it in baskets in which it was hoisted on deck and there sacked. This was found to be the only possible method by which the copra could be taken out in a marketable condition. It was, of necessity, slow, owing to the frightful conditions under which the men had to work, but the choice lay between that method and the total abandonment of all efforts to salve the copra. It was suggested by defendant that a large sand-sucker pump might be employed to bring the copra on deck. This idea also occurred to the men in charge of the work and the experiment was tried, only to be abandoned as a failure. The difficulty was that the hull of the vessel had been lined with mats in preparing it to receive the bulk cargo, and these mats, floating among the copra, constantly choked the pumps so that it soon became evident that the plan was not practicable.

Testimony of Rutledge (Rec. p. 103).

But the principal ground of contention in this record was (Defendant's Answer, Rec. p. 14) that—

> the copra submerged in the holds of the *Nippon* could have been hoisted by means of the ship's crane and clamshells to be had in Manila directly into large barges alongside, and could all have been taken from the *Nippon* before June 1st, and could have been salved with little damage.

The theory upon which this answer is framed is that the proper method of taking the copra from the hold of the *Nippon* would have been to dredge it out by means of dredging buckets, known variously as "clamshells," "grabs" and "orange peels." These instruments are often used for handling coal or in harbor-dredging work.

The method of operation is to hang them at the end of a pivoted spar, or crane, open them while suspended over the object to be dredged, let them drop, and then close the two leaves, or segments, thus enclosing so much material as happens to be within the range of the jaws. Defendant's theory was that the copra could have been dredged out of the holds of the *Nippon* by these appliances and dropped over the side into barges alongside of the vessel, and the whole process terminated within a few days.

Plaintiffs' reasons for not adopting this method of discharge were:

(1) The copra was in three layers, a dry layer, an alternatively submerged layer, affected by the rise and fall of the tides, and a constantly submerged layer. To have attempted to remove the copra with "clamshells," ponderous implements weighing half a ton each, would have resulted in mixing the good dry copra with the wet and decaying copra and thus spoiling the whole.

(2) The "clamshell" dredges could only be used to remove such of the copra as was in the square of the hatches, at least until the greater part had been removed, so that in any even it would have been necessary to use laborers to shovel the copra under the hatch openings so that no time or labor would have been saved.

(3) The "clamshell" dredges, owing to their weight, would have pounded the wet copra into a slimy, worthless pulp.

We will first examine the evidence of the defendant bearing on the methods of discharge, and then compare it with that produced by plaintiff.

Captain Eggert.

The captain of the *Nippon* apparently did not believe in the "clamshell" theory of discharge for he says that the equipment which he would have considered necessary was—

> baskets or big tubs or anything like that. (Rec. p. 151).

He does not state in any part of his deposition that he would have used "clamshells."

EMIL GOHDE.

This witness was the engineer of the *Nippon*, qualified as an expert wrecker by testifying that he was—

> the leading man for salving ships and discharging cargo on the coast of Sweden about a mile from shore (Rec. p. 156).

It is greatly to be deplored that Scarborough Reef could not have been placed at the proper distance from the coast of Sweden, so that the qualifications of this highly specialized expert might have been available in the proper environment.

Mr. Gohde says he could have salved the cargo of the *Nippon* in one week by the use of "grabbers," which instruments he described as follows:

> They are when you lower them down they open and when you hoist them start to close and they get full with the cargo when they close. (Deposition of Gohde, Rec. p. 157).

Mr. Gohde does not attempt to give us any information as to how he would have used the "grabbers" in removing that part of the copra which was not below the hatch opening, or by what method he would have avoided mingling the dry copra with the wet, but it is to be presumed that he would have followed the same method so successfully applied by him in taking a lot of cobblestones out of the ship one mile from the coast of Sweden, in the salvage of which he acquired his expert knowledge on the subject.

Mr. Charles Brown.

This witness was an advocate of the use of the instruments he terms "orange peels," for the purpose of removing the copra from the holds of the *Nippon* (Rec. p. 163), and expresses the opinion that if they had been used the copra would have been taken out of the *Nippon* in a week. This witness, however, does not show the possession of any special qualifications arising from experience which would give his opinion any great weight, for so far as the record discloses he had never had any experience whatever in handling copra, whether wet or dry. Nor can he have acquired the information upon which he bases his opinion by any process of study, for, unfortunately Mr. Brown has not mastered the art of reading (Rec. p. 166). Moreover, he was somewhat biased in his attitude on account of the fact that he believed himself to have been aggrieved, because, as he says, Captain Anderson promised to give him ₱2,000 as a bonus but did not do so (Rec. p. 165). He was apparently not satisfied with the compensation at the rate of P20.00 per day, which was paid him for his valuable services and was in a very bad temper at the time of giving his testimony (Rec. p. 169). However, as he does not undertake to say how he would have managed to use his "orange peels" to remove that part of the copra which was not right below the openings of the hatches, or how he would have prevented them from mixing the good copra with the bad, which are the really interesting features of the problem, we must assume that his testimony does not carry very much weight with it.

Captain Breckwold.

This witness, by occupation a marine suryeyor, called on behalf of defendant, was apparently the originator of the "grab" dredge theory of removing the copra cargo from the *Nippon*. Captain Breckwold held this theory

in such high esteem that, when at a meeting between the representatives of the owners of the vessel and plaintiffs, held while the salvage work was in progress, he was asked if he had any suggestions to make as to improvements which might be introduced in the methods being used, he mysteriously intimated that he had, but refused to divulge the information, upon the ground that this was his "secret." (Rec. p. 174.) He says—

> As the condition was it would have been the best thing to take those grabs which they discharge coals with—these big heavy things they throw down the hold of a ship to take out coals (Rec. p. 172).

Doubtless Captain Breckwold, as an experienced seaman, recognizes that there is some difference between the consistency of coal and that of wet copra, but he does not make any such admission in his testimony, nor does he tell how he would have used the grabs to remove that part of the copra which was not just below the square of the hatches, or how he would have prevented the mixing of the good copra with the bad. His idea was to bring two steamers up alongside of the *Nippon*, use the steam from their boilers to work eight grabs continuously, and remove the whole cargo in 8 days (Rec. p. 172). Whether the copra would have been worth anything after being churned up by the use of the grab buckets he does not undertake to say.

Mr. L. Lebreton.

This witness, by occupation a stevedore, called by defendant, also favors the idea of using grabs (Rec. p. 180). On cross-examination, however, it appeared that the witness advocated the use of grabs only after the dry copra had been removed by the use of shovels and baskets. He was asked—

> Then I understand you to say that you would only use grabs after you had removed that portion of the copra which could be taken out by means of baskets and shovels, is that so?

To which question the witness replied in the affirmative (Rec. p. 184).

MR. PATRICK MILLER.

This witness, called by defendant, by occupation a marine surveyor, when asked to state his opinion as to the best way to take the copra cargo out of the *Nippon*, answered (Rec. p. 186):

> Considering that approximately sixty per cent of the copra was get-at-able with spades and shovels, I certainly would have dug out what was accessible with shovels and baskets and used grabs on the remaining portion that was under water.

As this was exactly what was done by plaintiffs we have no fault to find with the methods advocated by Mr. Miller.

MR. A. C. BAILEY.

Mr. Bailey, by occupation a stevedore, was called by defendant and asked what in his judgment would have been the proper way to remove the copra cargo from the hold of the *Nippon*. He replied—

> Either put it out with baskets and shovels, or else in bags (Rec. p. 191).

Mr. Bailey's idea was to first remove as much of the copra as possible with buckets and shovels and then take the rest out by means of a pump. (Rec. p. 196). This plan, however, was tried by plaintiffs (Rec. p. 103) and found not workable because of the fact that the pump got clogged with the matting used in stowing the copra.

CAPT. C. S. ROBINSON.

This witness, called by defendant, testified that he would have used bags to remove the copra and pointed out clearly (Rec. p. 201) that it would have been impossible to use dredge buckets because of the difficulty of getting them under the hatch.

This was all the evidence introduced on behalf of the defendant on this subject of the methods which should have been used to remove the copra from the *Nippon*. The testimony of plaintiffs' witnesses on this subject was as follows:

MR. J. F. RUTLEDGE.

This witness, by occupation a marine engineer, was employed by plaintiffs and went to the *Nippon* on or about the 27th of May for the purpose of taking charge of the diving work being conducted in connection with the salvage of the hull of the vessel. He also had charge of the pumps which were sent out there for the purpose of endeavoring to remove copra from the hold after that portion which could be reached by the process of shoveling had been taken out. After testifying as to the methods which were being used in taking the copra out of the *Nippon*, Mr. Rutledge was asked if he thought it would have been a good idea to use clamshell buckets for that purpose, to which he replied that it would not if it was desired to save the cargo, because these implements could only have been used in the square of the hatches and their use even there would have been inadvisable because the good copra would have been spoiled by being mixed with the bad (Rec. p. 103). This witness stated that he knew of no way by which clamshell buckets could have been used to take out any part of the copra which was not in the wake of the hatches. (Rec. p. 103).

MR. BALDOMERO FERNANDEZ.

This witness, a man of over twenty years experience in handling copra for the Tabacalera Company testified that in his judgment the best way to take copra out of the hold of a ship under the conditions prevailing on the *Nippon* while the salvage operation was in progress would be—

> to send out sacks and baskets and vessels into which to transfer the copra; that if possible the dry copra should be sacked on board the ship, or else if it could not be sacked on board the ship, that it should be shoveled into baskets and sacked after it had been removed from the vessel (Rec. p. 120).

MR. JULIUS REIS.

This witness, for several years the Assistant Director of the Bureau of Navigation and the Insular Government, was the man who had general control of the direction of the salvage of the *Nippon* on behalf of Messrs. Erlanger & Galinger. He testified (Rec. p. 58) that after all the copra worth saving had been removed from the *Nippon*, "clamshell" buckets were used to remove the rest of the copra from the hold of the ship to enable the men to get down inside and patch the holes. He testified that clamshell buckets were not used to remove the good dry copra under his special orders. He says the men out on the boat wanted to use them from the beginning but that the witness would not permit it.

He says:

> If they had been used at the first we only could have used them right over the hatches for a space the size of the hatch; they can't be slewed back under the wings of the hold and we couldn't have saved anything like the amount of copra we did by taking it out in baskets (Rec. p. 58).

The witness was then asked whether any of the men engaged in the salvage work on the *Nippon* requested

that clamshell buckets be sent out when the work first commenced, to which he replied—

> Yes, they did. Some of them seemed to think that we ought to try to save the ship regardless of the cargo, but as I was trying to save as much of the cargo as possible, and knew we couldn't do it by using these clamshells, I refused to send them out until they got out all of the good copra that could be gotten out. We went after the good copra and got that out first and then I sent out the clamshells (Rec. p. 58).

MR. GEO. SIMMIE.

This witness is a stevedore engaged in that business in the city of Manila on a large scale. He had charge of stowing the cargo of copra on the *Nippon* in the bay of Manila and so was thoroughly familiar with the conditions on the vessel. He was particularly familiar with handling copra, as he testifies that almost all the copra that has been loaded in the port of Manila for the past few years was put on board by his firm (Rec. p. 71).

After stating his qualifications Mr. Simmie was asked what methods he would have adopted if he had been called upon to remove the copra from a vessel situated as was the *Nippon*, the facts being stated in the form of a hypothetical question setting forth the circumstances as they existed on the *Nippon* at the time in question. To this question Mr. Simmie replied as follows:

> *A.* Well, from the experience, I have had in the handling and loading of copra I would sack it, as I do all of the copra that I handle. I have never discharged any copra here but I suppose it would be practically the same in the handling of it. We made, I think, one experiment in carrying it out in bulk in a lighter and loading it on in baskets and we found that we couldn't handle it anywhere near as fast as we could in sacks, in fact we could not use one third of the copra handling it in bulk in baskets that we

could when it was sacked, and you don't gain anything because it has to be sacked anyway.

Q. And how would you have proceeded to take out this cargo of copra under the conditions I have just described?

A. I would have had the men skim off the top part of it, that is the dry or more or less dry layer on top by hand and sack it and handle it in sacks, because you have to get it into your sacks sooner or later any way, and if you dig down through this top strata until you strike the part where it is wet and partly decomposed you are bound to have a lot of this bad copra mixed in with the dry. I had one experience here of a ship coming in here to Manila with a cargo of beans that on account of a typhoon came in here with five or six feet of water in the cargo, and we claimed that we could get a good part of this cargo out in good shape or fairly good condition, so we went out there with our men and just skimmed this good part off the top. You know that ordinarily a cargo of that kind the part that is wet or in the water will cake up and get rather hard and there is a separate layer to it, and by working it by hand, you can dig down to this wet layer or strata and to a certain extent this copra would do the same thing, but if you go to digging down into your wet strata you are going to have your dry copra running down into the wet and mixing up with it.

Mr. Simmie was then asked (Rec. pp. 71 to 72) if it wouldn't have been possible to take the copra out of the *Nippon* to better advantage by the use of clamshell dredges, to which he replied as follows:

A. They wouldn't have been able to get anywhere near so much of it out in good condition; they would have to go right down through the good layer on the top and into the wet; that is the only way these grabs work, you have to drop them right down striaght and with the whole weight of the grab or they won't work, and if you used these grabs you would have to have men down in the hold trimming down your copra

towards the center otherwise your grab would be of no effect at all.

Q. Do you think from your experience as a stevedore, Mr. Simmie, that it would have been possible to remove the copra from the holds of this ship by the use of such mechanical means without mixing the dry copra with the wet and thus losing a large part of the dry copra or good copra?

A. You would have a very hard job to get it out with those grabs at all, you see the only way the grabs will work is straight down, you can't swing your grab back under the decks and you would have to have men down in there trimming the copra down so that the grab could work, and when you let your grab down you have to let it right down all the way so that it would dig a hole down through the wet strata and your men down in there would be trimming the good copra down in with the bad. Then only the cargo where they are in an open hold or a lighter is when you can work your grab to any advantage because, as I said, it will only work straight up and down. And another thing, when you get your copra out with a grab you have to handle it again any way so that you don't save any time, you might just as well sack it in the first place (Rec. p. 72).

Mr Simmie was cross-examined at some length with respect to the reasons upon which he based his opinion as to the undesirability of using dredge buckets and gave ample details in support of his views (Rec. pp. 73 and 74).

Mr. Ben Taylor.

This witness, who was the first white man to be sent out to the *Nippon* by the salvors, and who remained in charge of the operations until he was joined by Captain Anderson, has testified fully regarding the conditions prevailing on the vessel during the process of removing her cargo, the difficulties which were encountered and overcome, and the methods employed by the salvors. He states posi-

tively that although the difficulty of removing the copra from the hold of the vessel by means of buckets and shovels was very great, owing to the noxious fumes thrown off by the decomposing copra, it would have been useless to have attempted to remove the copra with dredge buckets on account of the fact that it would have been necessary to use men to shovel the copra into the square of the hatches so that it could be reached by the buckets, and because these heavy instruments would have churned the copra up into a slimy mass in the process of its removal. On being asked why he did not use clamshell buckets to take out the cargo, he testified as follows (Rec. p. 85):

> *A.* The reason I didn't use these clamshell buckets was that those buckets weigh half a ton, you are aware, and you have got to lower that bucket in a heap because you got to do that to pick up the stuff with it and you see it would go right straight down and strike the bottom. These buckets work on two wires, one of the wires to hold her slack on and the other one when you have your bucket filled up, when it is lowered down it is opened out and you got to let it go right straight down and then when she is filled up you haul taut on the wire and raise away, but you understand, when you let go it goes on the run. I didn't want to start this because in the first place it would break up all this strata where there was some good copra; you couldn't help that because it would go right down through the whole thing, and I saw my way clear, as a stevedore and as a man working a cargo, that by handling it in baskets I could save the cargo, and that's what I was out there to do if I could do it.

On cross-examination on this subject the witness testified as follows (Rec. p. 88):

> *Q.* Now you say that the buckets or orange peels would go clear to the bottom when you let them down?

A. Oh yes, they are bound to, sir.

Q. Well, they wouldn't have done that with the dry copra would they?

A. Yes, sir, you quite understand you can't gauge that in about two feet or so, you got to slack it down, when you let go you have to slack it down absolutely before it opens up; there is half a ton of weight that you just got to drop right straight down until you fetch up on the turn; you understand, it works on two wires and when you are lowering away with your bucket when you let go of the slack you just drop your bucket and she goes right down out of sight.

Q. And do you mean to say that when you lowered your bucket it would sink right through the whole mass of the copra?

A. Oh yes, it was not deep enough and a whole lot of this copra would be just a sort of a mash, a soft mush you could call it.

Q. That is to say when you began to use the buckets there was not enough of the dry copra left on the top to serve the purpose so as to enable you to use them to advantage?

A. It wouldn't matter; your bucket would go right down through the copra.

Captain Geo. Anderson

Captain Anderson was the skipper of the *Mindoro*. He commanded her for several days during the time that she was chartered to Erlanger & Galinger for use in connection with the salvage of the *Nippon*, and then resigned his position with the Bureau of Navigation to acccept employment from Messrs. Erlanger & Galinger to take charge of the salvage operations on the *Nippon*. After testifying at lenght with respect to the conditions prevailing on the *Nippon* and the methods of salvage of the hull and cargo applied under his direction, Captain Anderson was asked what he thought of the idea of using clamshell dredge buckets to take out the copra from the very first. To this he replied as follows (Rec. p. 98):

A. You would have got a few good loads out right at the first and the rest you would have mashed up in the hatchway, and after you got them down in the hatchway your clamshell would work right down into the wet copra and the rest of it would stay up around the sides, it would be just like a funnel. You can't swing your chamshells over to one side and you would have to trim the copra down from the sides to get a load.

Q. By trimming you mean that you would have to send men down in the holds with shovels to shovel the copra under the hatch?

A. Yes, sir, in digging down in the hatchway with a clamshell you would lose about two-thirds of your good copra. Take the lower hold, the hold is about twenty feet deep, you dig down in the center of it and just the good copra on the top in the opening is about all you would get, then you would be bound to get the wet copra mixed in with the dry; besides you would mash up a lot of your good copra; there is no way you can avoid it, these buckets are heavy and you have to let them drop or they wont work. You would never get anywhere near the amount of dry copra that way.

The evidence on this subject shows that not only the men who are confronted with the actual problem or removing the cargo in such a manner as to conserve its value to the highest possible degree, but also those of defendant's own witnesses, such as Capt. Robinson and Mr. Bailey, who had actual experience on which to base their conclusions, agree that while the grab-bucket system might have been a good one if the only object in view was to take the copra out of the ship as quickly as possible, regardless of any effect which the prosess might have upon its value, and that even then it could not have been accomplished without a great deal of hand labor in the hold of the vessel, the system actually adopted was the one best calculated to save the highest possible proportion of the copra.

PLAINTIFFS' FAILURE TO SALVE ALL THE COPRA.

Defendant complains in its answer that we did not salve *all* the copra. It is quite true that a considerable part of the copra was jettisoned, but this was done only when it was found that deterioration had progressed to such a point, in consequence of the action of the salt water on it, that it was no longer worth the cost of taking if from Scarborough Reef to Manila. As we have shown elsewhere, our men were at work taking copra out of the ship two whole days before Captain Eggert could have gotten help from Hongkong. The *Nippon* stranded on May 9th and our men commenced the salvage of the copra on the 17th (Test. of Capt. Anderson, Rec. p. 94). According to the testimony of defendant's witness Captain Bailey, it was fifteen days' work to take out the dry copra The *Nippon* had been stranded eight days when the salvage work commenced, so that at the end of the fifteen days Bailey estimates would be necessary to get out the *dry* layer of copra the submerged portion of the copra would have been in the water twenty three days. The evidence shows that long before that time the damage to the copra had been done. If the wet copra had all been taken out in a week from the end of the fifteen-day period—and it would have required a miracle to accomplish this—the result would have been just the same. The condition in which the wet copra must have been at the time the dry layer had been removed is clearly shown by the testimony of Dr. Pratt (Rec. p. 125). He conducted a series of experiments for the purpose of ascertaining the effects of sea water on copra, the experiments being conducted under circumstances approximating as nearly as possible those existing on the *Nippon*. The result was that at the end of the tenth day (Rec. p. 131) the submerged and tide-water strata of the copra were in an advanced stage of decomposition. The samples of the copra which

had been subjected to this treatment were shown to the court in the course of the trial, and there could be no doubt in the mind of any one who saw those samples that the copra was then worthless. Nevertheless, Dr. Pratt testifies that the condition of the copra in the hold of the *Nippon* on the nineteenth day must have been very much worse than was that of the copra in the experiment tanks, because of the fact that on the *Nippon* the conditions were much more favorable for rapid deterioration than it was possible to make them experimentally.

Mr. Thompson, the manager of the Philippine Vegetable Oil Co., a man of long and extensive experience in the purchase and grading of copra, testified from his experience from his examination of the samples of copra exhibited to the court and from his inspection of the copra in Dr. Pratt's experimental tanks in the Bureau of Science, that it was practically worthless for commercial purposes (Rec. p. 134).

Mr. Fernandez, of the Compañia General de Tabacos, a man of twenty years' experience in the copra trade, testified (Rec. p. 116) that copra which had been submerged in salt water for five or six days becomes practically worthless. This witness in his testimony (Rec. p. 117) gives a specific instance from his own experience to illustrate his opinion on the subject.

Apart from the testimony of these witnesses, we have the direct and positive evidence of the men on the *Nippon* as to the constant and rapidly progressing deterioration of the submerged copra. They testified that all the copra of any value was salved, and that that which was jettisoned was slimy, mushy stuff in an advanced stage of putrefaction (Rec. p. 105). That such is the case can admit of no doubt in the light of the uncontradicted testimony as to the fearful stench arising from it. Neither copra nor any other similar vegetable matter in such a

condition of rottenness as was the copra which was jettisoned from the *Nippon* could by any possibility be worth saving. The evidence of defendant's own witnesses shows that the damage to the copra had already been caused by its submersion long before it could have been reached by any salvors whom Captain Eggert or Struckmann & Co. could have engaged for the purpose.

TIME OCCUPIED BY THE SALVAGE OPERATIONS.

It is contended by defendant in its answer (Rec. p. 14) that plaintiffs took more time than was necessary to salve the copra and that by reason of this default on their part the copra deteriorated on account of its continued exposure to the action of the salt water and to the heat prevailing in the hold of the *Nippon*. Plaintiffs, on the contrary, contend that they accomplished the salvage of the copra with as much celerity as was possible under the circumstances by the exercise of the highest possible degree of diligence.

Many opinions have been expressed by the witnesses in this case as to the time within which the work of removing the copra from the hold of the *Nippon* could have been performed. Of course, as is always the case, those who did not have anything to do with the undertaking, and have never had any experience in such work, regard it as mere child's play. On the other hand the men who actually endured the hardships and worked out the problems which confronted them in the undertaking, tell a very different story, nor did it seem such a trifling one to those of the witnesses for defendant, who, although they had nothing to do with this particular salvage operation, have had experience in such work on other vessels.

Captain Eggert (Rec. p. 145), the skipper of the *Nippon*, was of the opinion that the work could have been done in eight days by the use of "baskets or big

tubs." His engineer, Mr. Gohde (Rec. p. 156), thought seven days with "grabbers" would be sufficient. Mr. Brown, the man with a grievance, thought that ten days would have been sufficient time in which to float the ship, and that a week's work with "orange peels" would have been sufficient time within which to remove the copra (Rec. p. 163). Mr. Breckwoldt (Rec. p. 172) also expressed an opinion that eight days with "grabs" would have been sufficient time in which to do the work. His theory was to have eight of these grabs working at the same time, but he does not say what in his opinion the effect of their use would have been on the copra, nor does he state in what manner he proposed to get the copra down into the openings of the hatches where the grabs might reach it.

All these witnesses must be regarded as being more or less prejudiced and hostile to the plaintiffs. They were all, with the exception of Brown, employees of defendant, and as to Brown, his animosity became very evident during the course of his cross-examination. He finally refused to answer questions because plaintiffs' attorney was not his "boss" (Rec. p. 169).

The witness, Mr. Lebreton, called by the defendant, agrees with us that the proper thing to do was to use shovels and baskets to remove all of the copra that could be reached with these implements (Rec. p. 184) and that only part of the copra which could not be taken out in this way should have been removed by the use of dredge buckets. He thinks, however, that the work could have been done in ten days' time, working day and night (Rec. p. 180), but admits (Rec. p. 183) that he has not had any practical experience in salvage work of this kind.

Mr. Patrick Miller, a marine surveyor, called by defendant, said that although he is not a stevedore he thinks that two weeks' work, working night and day, would have

been ample (Rec. p. 185). Mr. Miller thinks the methods adopted by plaintiff of using shovels and baskets to remove as much of the copra as could be reached in that manner was the proper one to follow (Rec. p. 186). He admits on cross-examination (Rec. p. 186) that his estimate of the time required to remove the copra is based upon the assumption that he could get all the laborers necessary and that they would be willing to work day and night. The actual facts were, however, that it was not possible to get all the men needed and that those who could be had would not work day and night and in fact were unable to endure the fumes of the copra for more than a short time on each shift.

Mr. Bailey, called by defendant, a stevedore, testifies that he had hoped to get the job of salving the *Nippon* himself, had the defendant succeeded in having the government revoke the charter of the vessels which plaintiffs were using for that purpose (Rec. p. 194). His estimate of the time necessary to remove all the dry copra (Rec. p. 191) was a fortnight, and his idea as to the method to be employed was to use shovels and baskets (Rec. p. 191). Mr. Bailey recognized the fact that the removal of the rest of the copra would be more difficult because of the effect of the gases and smells upon the laborers (Rec. p. 192).

Mr. Bailey's idea as to the time necessary was based upon the assumption that he would have one hundred and fifty men working in three shifts of eight hours, and that the men would be able to endure eight hours' continouus work (Rec. p. 193). He admits that it is doubtful if the men could stand these hours when working in the wet copra (Rec. p. 194).

It is alleged in the answer that if the plaintiff had not undertaken to do the work of salving the *Nippon* the defendant could have had it done more expeditiously by

employing Captain Hessell, or the C. S. Robinson Co., both of Manila, to do the work, it being averred that these people are experienced salvors, well supplied with the necessary equipment. It appears from the testimony of Mr. Lebreton (Rec. p. 182), that at the time that the work on the *Nippon* was being done by plaintiff, Captain Robinson, of the C. S. Robinson Co., was absent from Manila, in Europe. There is nothing in the record to show that any other person in the employ of the C. S. Robinson Co. had either the necessary ability or experience to undertake the salvage work, or that any authority existed on the part of such person to undertake it on behalf of that company. On the contrary, the record clearly shows (Rec. p. 195) that the company had on more than one occasion declined to undertake such work upon the ground that it had no funds (Rec. p. 203) availabe for that purpose. This witness, Mr. Bailey, testifies that the C. S. Robinson Co., the business of which was in his charge during the absence of Captain Robinson, had no salvage equipment of any kind in the months of May or June, 1913 (Rec. p. 194). The witness says that he knew of a place where he could rent pumps and such gear, however (Rec. p. 194). It seems, therefore, that the C. S. Robinson Co. was not in a position to undertake this salvage work in any event (Rec. p. 194) and was not considered in connection with it. (See deposition of Captain Robinson, Rec. p. 202.) Mr. Bailey testified, however, that he and Captain Hessell were prepared to undertake the work of salving the *Nippon* if possession could have been given them (Rec. p. 194). He says that his plan was—

> to shovel out all the dry copra and we were to get the big lighters of the Insular Lumber Co., which carry four or five hundred tons each and get the dry copra out and see if we could get the water down (Rec. p. 196).

It is quite apparent, therefore, that had the defendant succeeded in inducing these plaintiffs to surrender possession of the *Nippon*, the methods which would have been adopted by the only persons who, so far as the record discloses, would have been called upon to undertake the work for defendant, were precisely the same as those which plaintiffs were making use of. Mr. Bailey testifies that he intended to use Filipino labor, that he had considered the matter of getting Chinese from Hongkong but had decided that it would be more advantageous to use local labor (Rec. p. 196).

Captain C. S. Robinson, called by defendant, a man of recognized ability and experience as a salvor, but who was in Europe at the time the salvage of the *Nippon* was being conducted (Rec. p. 182), testified that in his judgment he could have brought in the dry copra in from fifteen to twenty days (Rec. p. 198). As to the rest, he said—

> It would all depend on the strength of the stench of the copra, whether the men would be able to work down there or not (Rec. p. 199).

Captain Robinson also testified that he would not have attempted to make use of Chinese laborers (Rec. p. 200), but would have gotten both men and material in Manila. His methods, as we have already pointed out, would have been the same as those employed by our clients. He says he would have had to use men in the hold of the vessel to get the copra into sacks or slings, and that grabs would have been "of no earthly use" (Rec. p. 201), because with them one could only dig down in the center.

Captain Hessell, although mentioned in defendant's answer as one of the available experts by whom the work could have been done, was not produced as a witness.

It appears, therefore, that of all the witnesses who have testified on behalf of the defendant on this subject, the

only two really practical men called, Captain Bailey and Captain Robinson, estimated respectively, 14 days and 20 days as the time necessary for the salving of the dry copra.

Now, the first shipment of copra, all of which was dry, arrived in Manila from the *Nippon* on May 20th, 1913, and the last lot of dry copra, according to the testimony of the witness Mr. Ferrier (Rec. p. 67), arrived in Manila on June 5th and the lower court so finds (Rec. p. 233). Consequently it appears that all the dry copra was taken out in the very time estimated by Bailey as necessary and in five days less than the time which Captain Robinson thought would be required.

It is clearly established, therefore, that the plaintiffs not only landed all the dry copra within the 15 days fixed by defendant's witness, Captain Bailey, as the time necessary for that purpose, but that they also brought in, within that time, a large amount of wet copra.

It is respectfully submitted that upon the evidence no lack of diligence whatever can be imputed to plaintiffs, but that on the contrary, it appears affirmatively that they were diligent and active in the highest degree. Certainly every incentive which self-interest could afford impelled them to put forth their best efforts. The amount of money expended was very large and plaintiffs were keenly alive to the fact that as salvors their only hope of reward lay in success. They had to get the copra out before they could float the ship. They were in constant apprehension of a storm which would certainly have completed the destruction of the ship and rendered all their efforts fruitless, for the total outlay incurred was far greater than the highest permissible reward for which the salvage of the copra would have sufficed to compensate. They labored under the spur of the keenest anxiety to complete their hazardous undertaking as rapidly as men and money

could accomplish the task, and it is respectfully submitted that no one could have done it more speedily. The lower appellate court took the same view, saying (Rec. p. 233):

> The plaintiffs commenced the actual work of salving the ship and cargo on May 18, 1913. The last of the cargo was brought to Manila the latter part of June. The last of the dry copra was brought into Manila June 5th. The estimates of the experts with regard to the time necessary to remove the cargo ranged from eight to twenty days. The greater portion of the cargo was brought in by the plaintiffs within fifteen days. The delay after June 5th was due to the difficulty in inducing laborers to work with wet copra. This difficulty would have arisen with any set of salvors and cannot be atributed to lack of care or diligence on the part of the plaintiffs. The plaintiffs were diligent in commencing the work and were careful and efficient in its pursuit and conclusion.

POINT FOUR

THE SALVAGE AWARD ALLOWED PLAINTIFFS BY THE DECISION OF THE SUPREME COURT OF THE PHILIPPINE ISLANDS IS GROSSLY INADEQUATE AND SHOULD BE INCREASED.

THE AMOUNT ALLOWED BY THE TRIAL JUDGE.

The judgment of the Court of First Instance (Rec. p. 217) was that plaintiffs should receive one-half of the proceeds of the sale of the salved copra, namely ₱74,298.36, and one-half of the interest accruing to the fund while on deposit in Hongkong Bank (Rec. p. 217). In its decision of March 9, 1916 (Rec. p. 238), the Supreme Court of the Philippine Islands reduced this to twenty-five per cent of the copra salved dry and forty per cent of the copra salved wet, or a total of ₱41,721.55.

Plaintiffs moved for a re-hearing and were given permission to support the motion by oral argument. After the hearing the Court modified its former decision (Rec. p. 239) by allowing the plaintiffs forty per cent of all the copra salved, wet and dry, or a total of ₱57,062.82. To this decision both parties duly excepted and appealed to this Honorable Court upon the respective assignments of error specified by them.

The Supreme Court of the Philippine Islands after a careful review of the evidence (Rec. pp. 219 to 238, inclusive) held:

(*a*) That the *Nippon* was derelict when the plaintiffs took possession of her (Rec. p. 244);

(b) That plaintiffs were "diligent in commencing the work and were careful and efficient in its pursuit and conclusion" (Rec. p. 233).

In the light of these conclusions, which are fully supported by the evidence, it is respectfully submitted that

the award is far less than that to which the plaintiffs are justly entitled. The Court, after quoting the statement of the elements constituing salvage service as laid down by this Court in the *Sabine* (101 U. S. 384) (Rec. p. 234) and having determined that the property was exposed to a marine peril, that the plaintiffs voluntarily rendered services in saving if from that peril and that the services so rendered were successful, takes up the question of the amount of the compensation which should be granted the salvors.

The court bases its conclusion in this particular on these propositions:

(*a*) That it is not proper to deduct the cost of the salvage operations from the value of the salved property in determining the amount available for distribution between the salvors and the claimants (Rec. p. 234).

(*b*) That the rule that salvors of derelict property are entitled to a moiety of the proceeds, if it ever existed, has been abrogated. (Rec. p. 236).

(*c*) That a smaller proportion of the cargo salved dry should be allowed as salvage award than of the cargo salved wet (Rec. p. 237).

THE COST OF THE SALVAGE OPERATIONS.

Whatever may be the rule, if any exists, by which the courts are to determine the amount which should be awarded to salvors as their compensation, it is certain that it is quite proper to take into consideration the necessary and proper expenditures involved in the operation. Unless the amount allowed the salvors represents substantially more than the mere reimbursement of the outlay necessarily incurred, the salvors are in effect denied any reward whatever, and such a principle would speedily remove the incentive to effort in salving property from marine perils which it is the policy of the law to maintain.

The record discloses (Rec. p. 46) that the value of the equipment employed by plaintiffs in the salvage operations was ₱299,593.73. The number of laborers employed, exclusive of the crews of the vessels and of the white engineers, divers and foremen, was from 100 to 200 per day during the greater part of the time employed in the salvage operations. (Exhibit E, Rec. p. 47.) The total net cash outlay incurred by plaintiffs in the salvage operations was ₱122,922.12 (Exhibits F and G, Rec. p. 50). It was stipulated that of this expense "not less than forty per cent was incurred in removing the copra cargo from the *Nippon* and bringing it to Manila" (Rec. p. 51). This establishes conclusively the fact that the minimum outlay of the plaintiffs in salving the copra was ₱49,168.84. As the total allowance granted by the amended judgment of the Philippine Court was ₱57,062.82 it follows that the net remuneration to plaintiffs for their enterprise, outlay and energetic efforts on behalf of defendant is the insignificant sum of ₱7,893.98. In July, 1917, plaintiffs will have been awaiting four years to recover the money expended by them in defendant's behalf. The bank rate of interest in Manila is eight per cent per annum—the Government Agricultural Bank established by Act 1865 of the Philippine Legislature is authorized to charge interest at the rate of ten per cent per annum on loans secured by first mortgage on real estate (Sec. 14)—so that the cost to plaintiffs of financing the operation at the prevailing bank rate already exceeds ₱15,500 for interest, and the affirmance of the judgment of the Court below would mean that the plaintiffs would fall short of getting their money back with interest by nearly ₱8,000—and this, notwithstanding the laudatory expressions of the lower Court as to the diligence and skill as to which the service was rendered. This would be a denial of justice which we believe this Court will not countenance.

In this connection it is to be kept in mind that the expenditure involved was absolutely necessary. Not an item of it was disputed by the defendant. It had done the work itself it would have employed the same means and, of necessity, incurred the same expenses. This was not a case in which by a spectacular rescue at sea a derelict vessel is conveyed to a safe anchorage in a comparatively short time and with an outlay insignificant as compared to the value of the property salved. The only way this property could be salved was laboriously to dig it out of the gas-laden hold of the *Nippon* and transport it 200 miles to shore. The number of men who could be employed at any one time was limited. Every minute devoted to this work increased the risk of a storm, which would have caused the total loss of the *Nippon*, which was the principal prize at stake. Plaintiffs endured that risk, salved a very large part of the defendant's property, and their reward is the mere reimbursement of their actual outlay, plus a sum which, if paid them in July, 1917, would barely amount to interest at 5% per annum! The remarkable part of it is that the lower Court (Rec. p. 234) commences its consideration of the question of the amount of the award by quoting from a decision of this Court in the case of the *Sabine*, 101 U. S. 384, as follows:

> Compensation as salvage is not viewed by admiralty courts merely as pay on the principle of *quantum meruit* or as remuneration *pro opere et labore*, but as a reward given for perilous services voluntarily rendered, and as an inducement to mariners to embark in such dangerous enterprises to save life and property.

Now, what possible inducement is offered by the opportunity to risk the total loss of the large expenditure necessary in cases of this kind in consideration of the return of the capital, if the salvage operations are success-

fully prosecuted, with interest at 5 per cent per annum?

Again the Court says (Rec. p. 234):

> It is true the award should be liberal enough to cover the expenses and give an extra amount as a reward for the services rendered.

Nevertheless in the application of this obviously correct statement of the principles of law involved, the original decision of the court authorized an award of only ₱41,721.55, which is less by ₱7,447.29 than the actual capital outlay involved, to say nothing of interest!

We agree that the rule is correctly stated by the lower Court (Rec. p. 234) that—

> A part of the risk that the plaintiffs incurred was that the goods salved would not pay them for the amount expended in salving them.

We most earnestly contend that in this case, however, plaintiffs did not make the mistake of incurring excessive expense in the salvage of defendant's merchandise. At an expense of ₱49,168.84 they brought to shore property which produced a cash net equivalent of ₱142,657.05 (Rec. p. 237). The surplus value produced by the risk incurred by plaintiffs is ₱93,488.21. Is it fair, is it just to limit the share of plaintiffs in this fund, whose very existence is due to their courage and enterprise, to the insignificant pittance doled out to them by the lower Court?

THE DETERMINATION OF THE AMOUNT OF THE AWARD.

We concede that there is no fixed rule which entitles the salvor to have the cost of the salvage operations first deducted before his proportionate part of the net proceeds of his efforts is awarded to him, although the Supreme Court of the Philippine Islands has, nevertheless, in an earlier case, indicated that where the cost of the salvage

operation can be definitely determined, it is proper to make the distribution by awarding the salvor an aliquot part of the net result of his efforts (Iribar *v.* Millet, etc. Co., 5 Phil. Rep. p. 362). Of course it would not be fair to the owners of the salved goods to apply this rule in cases in which the cost of the salvage has been unduly increased by unwise expenditure or under such circumstances that the result would be to absorb all, or practically all, of the proceeds of the salvage. The operations must be beneficial in some degree to all concerned, not merely to the salvor. But the method of making the allotment is a mere detail; the real question is to determine the proportion of the salved property which will reasonably compensate the salvor for the service performed, taking into consideration that in undertaking it he was compelled to assume the risk of the entire loss of his time and expenditure in the event of failure.

Neither shall we attempt to dispute the conclusion of the lower Court to the effect that it is no longer incumbent upon courts of admiralty, regardless of the circumstances of the particular case, to award the salvors a moiety of the proceeds of the salvage when the vessel from which it is taken is technically to be regarded as a derelict. We believe the true rule to be as stated in the case of Job H. Jackson, 161 Fed. Rep. 1015, cited by the lower Court (Rec. p. 236):

> There is no fixed rule for salvage allowance. The old rule in most cases of derelict was 50 per cent of the property salved; but under modern practice it may be less or it may be more. An allowance rests in the sound discretion of the judge or court who hears the case. * * * The allowance for salvage should not be weighed in golden scales but should be made as a reward for meritorious services rendered at a time when danger of loss is imminent, as a reward for such service so rendered is for the purpose of encouraging others to like services.

The trial judge, who heard the witnesses testify, allowed the plaintiffs one-half of the net proceeds of the sale of the salved copra, plus one-half of such interest as might accrue to the fund during the pendency of the suit. The Supreme Court of the Philippine Islands, while recognizing the general rule that "the award is largely in the discretion of the trial court" and that "it is rare that the appellate court will disturb the finding," proceeds to upset the award of the trial court upon the theory that a distinction should be made between the copra salved dry and that salved wet in determining the amount of the salvage award. In support of its theory the lower Court (Rec. p. 237) cites the following cases as authorities:

The *America*, 1 Fed. Cases 596
The *Ajax*, 1 Fed. Cas. 252.
The *Nathaniel Kimball*, Fed. Cas. No. 10033.
The *Brewster*, Fed. Cas. No. 1852.
The *Mulhouse*, Fed. Cas. No. 9910.
The *John Wesley*, Fed. Cas. No. 7433.
The *Northwester*, Fed. Cas. No. 10333.
The *Slobodna*, 35 Fed. Rep. 537.

In support of our motion for a rehearing in the Court below upon which the original judgment was modified by the abandonment of the distinction between the copra salved wet and the copra salved dry, we carefully analyzed the cases last above cited for the purpose of showing that the circumstances under which the awards were made were so different from those of the case now before the Court that it would be error to attempt to make the same distinction between the salvage of the wet and dry cargo as was made in those cases, and further, that it appears that the amounts allowed by the courts in each of them were far more liberal to the salvors than that to which it was proposed to limit these plaintiffs. The result of that showing and of the oral argument by which it was supported was to convince the Court below that the distinc-

tion which it had attempted to make was unfair, and we believe that an examination of the cases cited will show that in abandoning its original position in the matter the lower Court did not err, except on the side of undue liberality to defendant at the expense of the plaintiffs.

It is true that in the cases cited and in many others, the courts have made a distinction between the amount of salvage to be allowed on cargo saved dry and that saved wet, *where it appears that less effort was required to save the dry cargo.* Most of the cases cited by the lower court are cases in which baled cotton was taken dry from a vessel wrecked on one of the Florida reefs. Obviously, baled cotton can be handled more rapidly than loose copra and with less difficulty.

THE DISTINCTION BETWEEN WET AND DRY CARGO IN THE DETERMINATION OF THE SALVAGE AWARD.

The first case cited is the *American*, 1 Fed. Cases, 596. The report gives absolutely no information regarding facts relating to the salvage services, and it is stated that the case is nowhere recorded and that the opinion is not now accessible. It is evident that this case cannot be recorded as an authority.

The same is to be said with regard to the next case cited, the *Ajax*, 1 Fed. Cases, 252. All that appears is that the vessel was lost on Carrysfort Reef off the coast of Florida. Nothing is said regarding the cost of the salvage operation, the number of men engaged in the work, the nature or value of the salved material, the character of the cargo, or the time of year at which the service was rendered.

The *Nathaniel Kimball*, Fed. Cases, 10033. In this case the opinion states that the salved vessel went ashore nine miles from Key West. The *Nippon* was stranded one hundred and twenty-eight miles from the coast of Luzon. The cargo salved from the *Kimball* was cotton

in bales which could obviously be handled more rapidly than loose copra.

The *Brewster*, Fed. Cases, 1852. This vessel was wrecked on Carrysfort Reef. One hundred and fifty men saved $75,000.00 in ten days. They got 33 1-3% of the cargo salved dry. The vessel was not a derelict. Nothing in the decision shows the character or value of the ships employed in the salvage service, but evidently if the twenty vessels employed in this work had only one hundred and fifty men in their total crews, they must have been very small and of comparatively little value. Nevertheless, the award in that case was 33 1-3% for the dry cotton taken off the boat in bales, as compared with 25% first allowed by the lower appellate court in this case on the dry copra removed with immense difficulty from the gas-laden hold of the *Nippon*.

The *Mulhouse*, Fed. Cases, 9910. The reported decision in this case is stated by the reporter to be "condensed" and does not give any of the circumstances under which the services reported were rendered, the length of time required, the number of men or vessels employed, or the value of the property salved.

The *Northwestern*, Fed. Cases, 10333. In this case the Court stated that it took into consideration as an ultimate factor tending to reduce the value of the services of the salvors, the fact that the vessel was "in the harbor," and that as to the diving the fact that the decks of the wrecked vessel had been burned off, leaving the hold exposed, made the work of diving much less difficult than it would otherwise have been. Still he allowed twenty per cent of the dry and thirty-three and one-third per cent of the wet cargo. Obviously, an allowance of twenty per cent on dry cargo removed from a vessel in a harbor is very much more liberal than forty per cent for the salvage of merchandise taken from a wreck on a barren reef, one hundred and twenty-eight miles from the nearest point of supply.

The *John Wesley*, Fed. Cases 7433. The report of this case gives no information whatsoever as to the time devoted to the salvage service, the number of men employed, the value of the property used by the salvors, or the distance that the salved goods had to be transported. The only information relating to these important points is contained in the opening sentence, to the effect that "the property was saved from a wrecked bark laden with cotton."

The *Slobodna*, 35 Fed. Rep. 537. In this case, in which the Court allowed 25% of the value of cotton saved dry, nothing is stated in the decision which will enable us to determine what degree of effort was required in the salvage of the dry cotton as compared with the wet. It appears, however, that the vessel from which this cargo was taken was not an abandoned derelict but was in possession of the master and crew at the time that the libellants, who were professional, licensed wreckers, offered their services, which were accepted by the master.

It will appear that in none of the cases cited by the Court in which the allowance of only 25% on dry cargo was made, was the vessel from which the cargo was taken an abandoned derelict. The books clearly show that it is the constant practice of the American Courts of Admiralty to allow a higher percentage of award for serivces rendered by salvors to abandoned vessels than to vessels not so situated.

THE EXPENSE INCURRED AS AN ELEMENT TO BE CONSIDERED IN FIXING THE SALVAGE AWARD.

In the decision of the lower Court it is said:

> The plaintiff appellants contend that the expenses incurred should be deducted from the entire amount of the salved property and the remainder divided as a reward for the services rendered. This contention has no basis in the law of salvage (Rec. p. 236).

We do not contend that there is any hard and fast rule relating to the reimbursement of the salvors outlay. We recognize that if such a rule existed it would result in many cases in the complete exhaustion of the fund, leaving nothing for the owner. We *do* contend, however, that in cases such as this, where a large expenditure has properly and of necessity been incurred, and the result has been to save a fund considerably in excess of the cost of salvage, it is proper to take the outlay into consideration in fixing the amount of the award as the *real* compensation to the salvor is the excess, if any, over his outlay. There is nothing contrary to this view in the decisions cited by the lower Court.

The first case cited by the Court (Rec. p. 236) on this point is the *Carl Schurz*, 5 Fed. Cases, 84, regarding which it is said—erroneously—that the salvor asked the court "to first deduct the expenses," but the court refused to do so.

A careful reading of the text of this decision will show that the Philippine Court fell into error on this point. It is nowhere stated in the decision cited that the salvor raised the point now under consideration. His contention, as stated by the Court, was:

> That his compensation should be fixed on the value as shown by the proof, not by the sale, or else that the proportion should be so increased as to give him a larger amount than one-half of the net proceeds in the registry, and that under no circumstances should he be allowed less than his actual expenditures of money. This would exhaust the whole fund and leave nothing for the owners and throw all the loss for the unfortunate sale on them.

The reference to the "unfortunate sale" is explained elsewhere in the decision. The proof showed that the vessel in question was worth "in the hands of the salvor,

after she was raised, not less than $1,700.00" (p. 85), but the salvor having seized the vessel by process in the salvage case, had her sold *pendente lite*—

> while almost embedded in the ice, at an unfavorable time, and under unfavorable circumstances, so that she only brought $792.00 which is the sum in the registry to answer costs and for distribution between the salvors and the owners.

Half of the sum for which the vessel sold was not enough to repay the salvor for his actual expenditure, and it was on that ground that he contended that he should get half of the *value* of the vessel as shown by the proof, rather than only half of what she sold for. The Court refused to accede to this request (1) because to do so would be to absorb the whole proceeds of the sale; (2) because the "proof shows that too much time was expended by the libellant in the work; that it could and should have been accomplished at a much less cost than the libellant incurred"; and (3) "because the work was of a low order in merit from the standpoint of salvage, the boat having been snagged at her landing in this port, impaled upon a sunken wreck at the shore, and tied by her cables near her usual landing place * * * it does not seem to me that it is a case calling for anything in the way of reward as it is understood in the admiralty courts."

It is clear therefore that this case is not an authority upon the point here in question. It is, however, significant that notwithstanding the fact that the services rendered were of a low order of merit and the court deemed them to have been rendered inefficiently and unskillfully, and notwithstanding the fact that the salved goods were sacrificed by forced sale, the court allowed the salvor a full 50 per cent of the gross recovery.

Nor is the next case (Rec. p. 235) cited, The *Adolphe*, Fed. Cases, 17712; 29 Fed Cases, 1350, an authority for

this proposition. In that case the salving vessel found a derelict on shore and to make room for the cargo, tackle and apparel of the derelict, the salvors threw overboard part of their own cargo which they thought of less value. It was contended that the full value of the jettisoned cargo should be first repaid to the owners out of the proceeds of the salvage, but this the Court refused to permit, upon the ground that if this were done nothing would be left to the owners of the salved cargo. The evidence showed that the cargo thrown overboard from the salving vessel to make room for the cargo and goods taken from the wreck was almost as valuable as the goods which were saved. The Court held that the owners of the salved cargo would not be permitted to suffer for the error in judgment thus committed by the salvors. In this case (p. 1,354) the Court cited with approval a decision by Justice Story, Fed. Case 12093, to the effect that—

> The rule of salvage in *cases of derelict* ranged from one-third to one-half of the property saved *after deducting costs and expenses.*

This Court then (Rec. p. 235) cited The *Edwards*, 12 Fed. Rep. p. 508. But in this case the award was 70 per cent of the *net* proceeds of the sale after deduction of all costs, expenses and duties.

The *L. W. Perry* case (71 Fed. Rep. 745) is authority for the proposition that in no event will the total value of the salved property be awarded to the salvor when a claimant appears, although the award may be insufficient to reimburse the salvor for the actual outlay involved in the service. This principle, which is fundamental in the law of salvage, that no matter how costly the salvage service may have been in no event will be salvor be permitted to retain the whole proceeds when a claimant appears, is the one upon which the decisions cited by the Philippine

Court in its decision are made to rest. In every one of those cases, had the contention of the salvor been sustained, the salvage reward would have absorbed the total proceeds of the sale of the salved property. Obviously there is no ground for the application of that principle in this case, as plaintiffs do not contend for any such unfair division of the proceeds of their skill and industry.

If the effect of allowing plaintiff a refund of its cash expenditures out of the proceeds of the salved property would be to exhaust the fund, then beyond question the cases cited in the decision herein would be in point, to the effect that such a claim could not be sustained. But it is obvious that such would not be the case here, and that after the repayment to the plaintiff of its actual outlay a substantial balance remains, representing the net value of the salvage, available for distribution between the salvors and the claimants.

THE WEIGHT TO BE GIVEN THE OPINION OF THE PHILIPPINE SUPREME COURT AS TO THE AMOUNT OF THE AWARD.

This case is presented upon practically concurrent findings on the part of each of the lower courts, save with respect to the amount of the compensation to which plaintiffs are entitled. The plaintiffs appealed from the decision of the trial judge upon the sole ground that the award was insufficient. The Supreme Court of the Philippine Islands, although recognizing in the abstract the rule that great weight is to be given the finding of the trial judge in such matters (Rec. p. 236) proceeds to substitute its own judgment for that of the court of original jurisdiction. In this first decision (Rec. p. 237) the Philippine Supreme Court states as the ground upon which it deemed it proper to diminish the award of the trial judge its opinion that he had fallen into error in failing to establish a different standard of award for that part of the copra salved dry an compared with that salved wet.

After hearing our argument in support of our motion for a modification of the judgment, the lower court completely abandoned the "wet and dry" theory, and made an award of a fixed proportion the net value of all the cargo brought ashore, regardless of its condition. The amount allowed, however, is a very material reduction of the compenstation allowed by the trial judge, for which no reason whatever is given. The lower court, therefore, having upset the decree of the trial judge in this regard, but without stating any reason for its action, after abandoning the original position taken by it, we believe that the matter of the award is entirely open, and that the decree of the trial judge should be restored—unless, indeed, this Court sees fit to increase the original allowance, as, we believe it would be wholly justified in doing upon the evidence.

In the case of Post *v.* Jones (19 How. 161) it was said on the subject of the amount of salvage to be allowed:

> While we assent to the general rule stated by this court, in Hobart *v.* Drogan, 10 Peters 119, that "it is against policy and public convenience to discourage appeals of this sort in matters of discretion" yet it is equally true that where the law gives a party an appeal he has a right to demand the conscientious judgment of the appellate court on every question arising in the cause. Hence many cases are found where the appellate courts have either increased or diminished the allowance of salvage originally made, even, where it did not "violate any of the just principles which should regulate the subject. See the *Thetis*, 2 Knapp, 410.

THE LOWER COURT GIVES NO REASON FOR ITS REVOCATION OF THE DECREE OF THE TRIAL COURT AS TO THE AMOUNT OF THE SALVAGE AWARD.

The memorandum order by which the original order for judgement is modified states the reasons for the change (Rec. p. 239) to be—

> The efficient and prompt method by which the plaintiffs performed the salvage service in question and the hardship and risk which they undertook and the great expense incurred * * *

These are, no doubt, weighty reasons for allowing plaintiffs a liberal award, but no reason whatever is given for the very material reduction made in the award as finally established by the Supreme Court of the Philippine Islands as compared with that allowed by the trial judge. The rule being that "the award is largely in the discretion of the trial court" and that "it is rare that the appellate court will disturb the finding," it would appear that when one of those rare cases occurs in which the court feels impelled to reduce the amount of the compensation granted some powerful reason for doing so should exist and should be stated as the basis of the court's action. It is, therefore, submitted that it is error for the appellate court to reduce the award of the trial court—

> unless there has been some violation of just principles or some clear or palpable mistake.
>
> The *Lamington*, 86 Fed. Rep. 675.

THE SALVAGE AWARD OF THE TRIAL COURT WAS NOT EXCESSIVE.

There was no violation of just principles or other error prejudicial to defendant in the salvage award of the trial court. The trial judge alloted the plaintiffs the moiety of the net proceeds of the sale of the salved copra, namely, ₱74,298.36, together with their proportionate share of such interest as might accrue to the fund during the pendency of the suit (Rec. p. 217). As the actual cash expenditure involved in the salvage of the copra was ₱49,168.84 (Ante p 79), the award, had it been paid the day this judgment was rendered, would have represented a net recompense

to plaintiffs of ₱25,129.52, less the interest charge on the capital outlay. Certainly this cannot be regarded as an excessive award, as compensation for a salvage service in which the hazard of total loss was as great as in this case.

An examination of the decisions of this Honorable Court and of the lower Federal courts in salvage cases will demonstrate that much greater liberality to salvors is the established practice.

In the case of the *Hope*, 10 Pet. 116, it appears that the libellants after *two days' work* succeeded in floating a brig stranded in Mobile Bay and which had been abandoned by the master and crew. The trial court allowed one-third of the value of the salved vessel as compensation. Mr. Justice Story, writing the opinion of this Court, said:

> No objection has been made to the amount of the salvage devree by the lower court, if the libellants are entitled to any, and the objection has been properly abandoned; for the amount under the circumstances is certainly not unreasonable.

It is obvious that the award in this case was much more remunerative to the salvors than would have been a fifty per cent allowance to these plaintiffs.

In Post *v.* Jones, 19 How. 161, the court allowed the libellants a moiety of the value of a cargo of oil taken from a vessel stranded near Berhing Strait and safely conveyed to Hawaii although—

> the transfer of the property from the wreck required no extraordinary exertions or hazards or any very great delay.

In the case of the *Connemara*, 108 U. S. 359, the libellants, by their exertions succeeded in extinguishing a fire which had broken out in a vessel at anchor in the Mis-

sissippi River. No expense whatever was involved in the performance of the service and a very few men effected it:

> "In extinguishing the fire there was no serious risk of loss or damage to the tow boat or of injury to life or limb of any of the salvors.

The value of the vessel on which the fire occurred, and of her cargo, was $236,637.00 The salvage award was $18,930.96. This court, while indicating a belief that it would have been better satisfied with an award of smaller proportion, declined to reduce it, holding that it could not say that the "amount awarded is so excessive as to violate any rule of law." Obviously there is no comparison whatever between the advangage to the salvors of receiving such an award as this for a few minutes' successful exertion as compared to the remuneration allotted plaintiffs in this case for labor running over a period of over forty consecutive days, and a heavy investment of capital.

See also:

The *Lugana*, 215 Fed. Rep. 964;
The *Flora Rogers*, 152 Fed. Rep. 288.

In the case of the *Myrtle Tunnell*, 146 Fed. Rep. 332, an award of fifty per cent was allowed for the salvage of a derelict brig worth with her cargo about $24,000. The service rendered was to tow the disabled vessel about 100 miles into Charleston Harbor, three tugs and their crews having been enployed in this service, the time and expenditure being comparatively insignificant.

In the case of the *Gibson*, 160 Fed. Rep. 250, a fifty per cent allowance was made for the salvage of a coal barge worth with her cargo $20,000.00, found adrift and towed to port with eighteen hours' work.

In the note of the *Lamington* case, 86 Fed. Rep. 688, will be found a compilation of preceding salvage deci-

sions rendered by federal courts with a statement of the amounts which have been allowed to salvors in each case. The court will note that in a very large number of these awards, over fifty per cent has been granted under circumstances showing a less degree of merit than that present in this case. In most instances the profit to the salvors upon the award has been far greater than it would be upon a fifty per cent award in this case, for the services have been rendered under such circumstances that comparatively little outlay or loss of time has been required.

In the case of the *Blackwell v.* Sancelito Tug Company (10 Wallace, 1) the court said:

> Courts of admiralty usually consider the following circumstances as the main ingredients in determining the amount of the reward to be decreed for a salvage service: (1) The labor expended by the salvors in rendering the salvage service. (2) The promptitude, skill and energy displayed in rendering the service and saving the property. (3) The value of the property employed by the salvors rendering the service and the danger to which such property was exposed. (4) The risk incurred by the salvors in securing the property from the impending peril. (5) The value of the property saved. (6) The degree of danger from which the property was rescued.

The evidence in the case shows that every one of the elements above enumerated as meriting a liberal reward is present in this case. The labor was severe and protracted, requiring the concerted efforts of a large number of men; a large amount of money was necessarily at risk in the equipment needed for the service; the salvors were exposed to the great risk of loss inherent in the exposed position of the vessel and the constant danger of bad weather; the property saved was very valuable; the danger from which it was rescued was that of total and irretrievable loss.

It was argued below that because the individual members of the plaintiff firm did not themselves participate in the physical labor of removing the copra from the wreck of the *Nippon* no consideration should be given the element of danger to which the men were exposed in determining the amount of the award. The obvious answer is that of necessity in cases such as the present, in which the control of large amounts of capital is necessary, both for equipment and for operating charges, unless men in the possession of this capital are willing to risk it, so as to make it possible for the men employed to do their work efficiently, the mere willingless of the latter to assume the risks involved would be of no practical value. They have neither the means nor the business experience necessary, and must of necessity look to the *entrepreneur* to remunerate them for the personal risk assumed, and he, in turn, is justified in expecting that this outlay be taken into account in the determination of the salvage award. Naturally and of necessity he has to pay the men he employs a higher rate of compensation than they would be satisfied to earn under normal conditions. On the other hand the men so employed are not salvors in the legal sense of the word, for their compensation does not depend upon the success of the enterprise in which they are employed.

The Court long since met and disposed of this particular objection, so vigorously—even offensively—urged by the defendant in the lower courts.

> Objection is also made that the owners of a vessel cannot promote a salvage suit unless they participate in the salvage services, or if they promote such a suit they cannot participate in the award decreed for the salvage service except for the risk and damage to which their property was exposed in rendering the salvage service. Such an objection was made in the case of the *Companche*, before cited, but the court overruled the objection, and that ruling is

adopted and applied in this case. Beyond doubt remuneration for salvage service is awarded to the owners of vessels on account of the danger to which the service exposes their property, and the risk which they run of loss in suffering their vessels to engage in such perilous undertakings, but it is not admitted that the amount of the allowance must be reduced on that ground. Corporations, as the owners of vessels or steamers, may promote a salvage suit, and it makes no difference in that respect whether they were present or absent, provided it appears that the vessel employed was well manned and equipped for the service."

The *Blackwell*, 10 Wallace 1.

In the light of the circumstances of the present case it is respectfully submitted that an award of sixty per cent of the funds obtained from the sale of the copra and such interest as the Court may think proper, would be no more than fair to plaintiffs. This would be a gross award of ₱85,594.23, disregarding interest. Deducting from this the sum of ₱49,168.40 (Stipulation, Rec. p. 51) which plaintiffs have expended in the salvage of the copra, the net remuneration to them would be ₱36,425.83, leaving to defendant ₱57,062.82. This rate of remuneration would be much less than that voluntarily paid by the owners of the *Nippon* for their services in the salvage of the hull. Their total cash outlay being ₱122,922.12, and it having been stipulated that of this sum 40 per cent was spent in the salvage of the copra (Stipulation, Rec. p. 51), the cost of salving the ship and the insignificant quantity of cargo other than copra aboard her was ₱73,753.28. The owners of the *Nippon* voluntarily paid plaintiffs ₱145,800.00 for salving her (Rec. p. 220) and they were allowed forty per cent of the value of the other cargo. The general cargo was valued at ₱13,574.68 (Rec. p. 220) on which 40 per cent is ₱5,429.87. This

sum added to the ₱145,800.00 received for the salvage of the hull makes a total gross return to plaintiffs of ₱151,229.87, or a profit over the outlay incurred in this part of the work of ₱77,476.65 exclusive of interest. The cost of salving the hull and the general cargo was approximately 28 per cent of the salved value (value ₱263,574.00 —cost of salvage ₱73,753.28) while the cost of salving the copra was approximately 35 per cent (salved value ₱142,657.00—cost of salvage ₱49,168.00).

In determining the amount of the award for the copra it is respectfully submitted that the Court should take into consideration in addition to the expenditure actually involved in its salvage, the fact that it greatly delayed the salvage of the ship, thereby greatly augmenting the risk to which plaintiffs were exposed of losing all they had invested in their efforts to salve the vessel. If a storm had arisen just after the last lot of the defendant's copra had been removed from the wreck and the *Nippon* had slipped off the Reef, defendant would have been the sole beneficiary of plaintiff's efforts, but would, no doubt, have objected very strongly had it been suggested that the award for the salvage of the copra should be increased because of the fact that the attempted salvage of the vessel had been a failure—and such an objection would have been entirely justified. Conversely, the fact that the owners of the hull showed their appreciation of the success of plaintiffs' efforts by making a prompt and fair settlement, which left them a reasonable profit on their investment, proportionate to the risk involved, should not be taken into consideration as a reason for reducing the amount to which plaintiffs are fairly entitled for the salvage of the copra. From the standpoints of their respective owners these operations were entirely independent—except that had we been so unfortunate as to have lost the vessel because of the delay involved in the removal

of the copra the owners of the hull might have been in a position to contend, with no little show of reason, that we should have proceeded to jettison the cargo without delay.

Of course, plaintiffs voluntarily assumed all risk of loss inherent in the operation and would have had to endure the consequence had it been a failure, but the issue having demonstrated the correctness of their judgment, and their efforts having been successful to a remarkable degree, the award should be commensurate not only with the benefit derived by the owners of the salved property but with the risk of loss assumed by plaintiffs.

THE CIRCUMSTANCES OF THE CASE JUSTIFY THE ALLOWANCE OF INTEREST AND COSTS.

The decision of the trial court was that plaintiffs should have fifty per cent of the fund derived from the sale of the copra, and half of whatever interest might accrue to the fund during the time it is held on deposit pending the final determination of the action (Rec. p. 217). The Philippine Supreme Court made no express mention of the matter of interest, but it is to be assumed that as it did not reverse the decision of the trial judge, but only "modified" it, it intended the decision to stand except as expressly modified. The appeals having brought the whole matter here for review, however, the allowance of interest is entirely within the discretion of this Court.

If the question were to be determined in accordance with the Philippine law the rate of interest allowable would be six per cent per annum. (Code of Civil Procedure, Sec. 510). But this being an admiralty case, is to be governed by the general maritime law and not by the statute or customary law of the particular locality in which the case happens to be tried. (Southern Pacific Co. *v.* Jensen, decided May 21, 1917). The grant of "admiralty and maritime jurisdiction" to the courts of

first instance of the Philippines by Sec. 56 of Act 136 of the Philippine Commission, expressly confirmed and removed from the control of the local legislature by the Act of Congress of July 1st, 1902 (Sec. 9), and August 28th, 1916 (Sec. 26), being couched in the same language as that used by the Constitution (Art. 3 Sec. 2) in granting this jursidiction to the Federal Courts, must, we believe, be given the same interpretation as that which those words have been given as found in the Constitution. In this connection it is significant that Congress should twice have expressly withheld from the Philippine Legislature the power to change the admiralty jurisdiction conferred upon the Philippine courts, while bestowing the most liberal powers of legislation upon other subjects. The only object which Congress could have had in so doing must have been to preserve the unity of the admiralty jurisdiction, regarded as a system of substantive law applied by the modes of procedure peculiar to the courts in which it originated—to make the admiralty law and procedure the same in Manila, while enforced and applied under our authority, as it is in New York.

We realize that this view is at variance with the opinion expressed by the court below in *Heath* v. S. S. *San Nicolas* (7 Phil. Rep. p. 532) but it seems none the less well founded. The cause of action arose in this case on the high seas. An admiralty suit *in personam* might have been brought just as readily in San Francisco as in Manila, assuming the parties to be subject to the jurisdiction of the court. Is there any reason why the rights of the parties should be determined by different laws, according to the court in which the suit might be tried? We believe not. We contend that the "admiralty and maritime jurisdiction" of the courts existing by authority of Congress is one and the same in each and every one of those courts. If we are correct in this assumption, then

the matter is governend by Paragraph 4 of the Twenty Third Rule of this Court, which is part of that law, and not by the statutory laws relating to interest on judgments in force in the Philippine Islands. For, as was said in *Hemmenway* v. *Fisher* (20 Howard, 255)—

> there could be no reason for giving one rate of interest where a case of collision or salvage was in the first instance tried and decided in Louisiana, another rate rate of interest where it was tried and decided in New York or any other State where the interest allowed by the State laws was different.

Continuing, in the case cited, the Court said:

> Moreover, in cases of collision and salvage, and more especially in the latter, it is impossible to fix the sum that ought to be awarded with absolute certainty by any rule of calculation. It must depend mainly upon estimates, and the opinions of persons acquainted with the subject. * * * No rule, therefore, fixing any certain rate of interest upon decrees in admiralty, whenever the decree is affirmed, could be adopted with justice to the parties, and a discretionary power is reserved, to add to the damages awarded by the court below, further damages by way of interest, in cases, where, in the opinion of this court, the appellee, upon the proofs, is justly entitled to such additional damages. But this allowance of interest is not an incident to the affirmance affixed to it by law or by rule of court. If given by this court, it must be in the exercise of its discretionary power, and *pro tanto*, is a new judgment.

It is respectfully submitted that this case is peculiarly one in which the court is justified in making liberal exercise of the discretionary power in this regard vested in it. It is to be taken into account that whatever may be the share of the fund in dispute which the court may see fit to allot plaintiffs, that share will in large measure be com-

posed of plaintiffs' own funds, coming back to them in this guise many years after they were expended for defendant's benefit—and, further, that the fund so composed has during all those years been increasing by the addition of the interest—at a very low rate, it is true—allowed by the bank in which it is deposited.

CONCLUSION.

For the reasons stated above it is respectfully submitted that the decision of the lower court should be modified by increasing the salvage reward to plaintiffs to not less than sixty per cent of the fund, plus such additional amount by way of interest as the Court may think proper and just, and that plaintiffs have judgment for their costs.

Respectfully submitted,

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WASHINGTON, D. C.,

June 1st, 1917.